JOSEF TIBOR DEUTSCH, an individual; JOSEF TIBOR DEUTSCH, as the survivor of George Deutsch, Plaintiffs-Appellants, v. TURNER CORPORATION, a Delaware Corporation with corporate regional headquarters located in California; KITCHELL CORPORATION USA, an Arizona Corporation authorized to do business in California; HOCHTIEF AG, a German Corporation, Defendants-Appellees. WOODROW M. HUTCHISON, Plaintiff-Appellant, v. MITSUBISHI MATERIALS CORPORATION; MITSUBISHI MATERIALS USA, a business association purporting to be a California corporation; MITSUBISHI CORPORATION, a Japanese business association; MITSUBISHI INTERNATIONAL CORPORATION, a business association purporting to be a New York corporation; MITSUBISHI HEAVY INDUSTRIES, LTD., a Japanese business association; MITSUBISHI HEAVY INDUSTRIES AMERICA, INC., a business association purporting to be a Delaware corporation, Defendants-Appellees. LESTER

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business association; MITSUBISHI MATERIALS USA CORPORATION, a business association; MITSUBISHI CORPORATION, a business association; MITSUBISHI HEAVY INDUSTRIES AMERICA, INC., a business association, Defendants-Appellees. ARTHUR TITHERINGTON; HENRY GEORGE BLACKHAM; FERGUS DUNSMORE MCGHIE, on behalf of themselves and others similarly situated, Plaintiffs-Appellants, v. JAPAN ENERGY CORP, a Japanese business association; JAPAN ENERGY USA, a Delaware Corporation; IRVINE SCIENTIFIC SALES, a California Corporation, Defendants-Appellees. FINNIE B PRICE, On behalf of himself and all others similarly situated, Plaintiff-Appellant, v. MITSUBISHI CORPORATION; MITSUBISHI HEAVY INDUSTRIES, LTD., a corporation; MITSUBISHI HEAVY INDUSTRIES AMERICA INC.; MITSUBISHI INTERNATIONAL CORPORATION, a corporation; MITSUI & CO (USA) INC.; MITSUI & CO. LTD., a corporation; MITSUI MINING

CO LTD; MITSUI MINING USA INC, a corporation, Defendants-Appellees.

No. 00-56673, No. 01-17115, No. 01-17116, No. 01-17123, No. 01-17124, No. 01-17134, No. 01-17155, No. 01-17157, No. 01-17160, No. 01-17172, No. 01-17176, No. 01-17177, No. 01-17185, No. 01-17189, No. 01-17195, No. 01-17197, No. 01-17201, No. 01-17203, No. 01-17204, No. 01-17207, No. 01-17210, No. 01-17211, No. 01-17230, No. 01-17243, No. 01-17251, No. 01-17252, No. 01-17260, No. 01-17265, No. 01-17499

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ORDER AMENDING OPINION

ORDER

The opinion filed January 21, 2003 is hereby amended as follows:

1. Slip op. at 991, second [*2] full paragraph, line 6, after "because a state is," insert "generally."
2. Slip op. at 991, replace the last sentence (beginning "Because section 354.6 is substantive law"), including footnote 4, with the following:

Nevertheless, that distinction does not affect the outcome here. Our determination of the foreign affairs doctrine issue does not depend on our conclusion that section 354.6 is substantive law. Whether substantive or procedural, section 354.6 creates a special rule that applies only to a newly defined class of tort actions – actions brought by Second World War slave labor victims against the entities that enslaved them. This new rule profoundly alters the likelihood that such actions will succeed, by not only extending the statute of limitations for claims that were timely when the statute took effect (although we doubt that any such claims existed), but, far more important, by reviving claims that were already time-barred. In the latter instance, the statute upset the repose of potential defendants. Such a revival of liability – even civil liability – is troubling and raises serious due process questions. We need not address those questions here, however. The important [*3] point for our foreign affairs analysis is that the California legislature created – or at least resurrected – a special class of tort actions, with the aim of rectifying wartime wrongs committed by our enemies or by parties operating under our enemies' protection.

3. Immediately following the passage inserted above (after "under our enemies' protection") add a new footnote containing the following text:

Two decisions of the California Court of Appeal, one by the Second Appellate District and one by the Fourth, have recently addressed whether section 354.6 is substantive or procedural in nature. The decisions reached opposite conclusions. Compare Mitsubishi Materials Corp v. Superior Court, 2003 Cal. App. LEXIS 182, No. G030056, slip op. at 2 (Cal. Ct. App. Feb. 6, 2003) ("The legislation actually creates a state law claim which otherwise would not exist . . . .") with Taiheiyo

Cement Corp. v. Superior Court, 105 Cal. App. 4th 398; 129 Cal. Rptr. 2d 451, slip op. at 24 (Cal. Ct. App., 2003) ("The sole purpose of section 354.6 is to extend the statute of limitations for common law claims for unpaid labor and personal injuries arising out of slave or forced labor."). Both decisions were issued after our opinion [*4] was sent to the Clerk for filing.

4. Slip op. at 1005, replace the first full paragraph with the following:

Section 354.6 runs afoul of the restriction on the exercise of foreign affairs powers by the states. Because California lacks the power to create a right of action – or, alternatively, to resurrect time-barred claims – in order to provide its own remedy for war-related injuries inflicted by our former enemies and those who operated in their territories, we hold that section 354.6 is unconstitutional.

With these amendments, the panel has voted unanimously to deny the petitions for rehearing and rehearing en banc. The full court has been advised of the petitions for rehearing en banc, and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. 35. The petitions for rehearing and rehearing en banc are denied.

The mandate will be held pending a decision in American Insurance Association v. Low, 154 L. Ed. 2d 768, 123 S. Ct. 817 (2003) (No. 02-722) (granting certiorari).

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association; MITSUBISHI CORPORATION, a Japanese business association; MITSUBISHI SHOJI; SUMITOMO CORP.; SUMITOMO COMMERCIAL COMPANY, a Japanese business association, Defendants. JAMES O. KING, Plaintiff-Appellant, v. NIPPON STEEL CORP; NIPPON STEEL USA, Defendants-Appellees. PERFECTO LLANZA, on his own behalf and on behalf of all others similarly situated; ALBERTO SALDEJENO; ACELOPIO GALEDO; GENEROSO JACOB; ERNESTO SANTO DOMINGO; IMELDA SANTO DOMINGO, Plaintiffs-Appellants, MITSUI & CO (USA), INC, a business association; MITSUI MINING CO., LTD., a Japanese business association; MITSUBISHI CORPORATION; NIPPON STEEL CORP, a Japanese business association; NIPPON STEEL USA INC., Defendants-Appellees. ALBERTO SALDAJENO; ACELOPIO GALEDO; GENEROSO JACOB, individually and on behalf of a class of persons similarly situated; PERFECTO LLANZA; ERNESTO SANTO DOMINGO; IMELDA SANTO DOMINGO,

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business association; MITSUBISHI MATERIALS USA CORPORATION, a business association; MITSUBISHI CORPORATION, a business association; MITSUBISHI HEAVY INDUSTRIES AMERICA, INC., a business association, Defendants-Appellees. ARTHUR TITHERINGTON; HENRY GEORGE BLACKHAM; FERGUS DUNSMORE MCGHIE, on behalf of themselves and others similarly situated, Plaintiffs-Appellants, v. JAPAN ENERGY CORP, a Japanese business association; JAPAN ENERGY USA, a Delaware Corporation; IRVINE SCIENTIFIC SALES, a California Corporation, Defendants-Appellees. FINNIE B PRICE, On behalf of himself and all others similarly situated, Plaintiff-Appellant, v. MITSUBISHI CORPORATION; MITSUBISHI HEAVY INDUSTRIES, LTD., a corporation; MITSUBISHI HEAVY INDUSTRIES AMERICA INC.; MITSUBISHI INTERNATIONAL CORPORATION, a corporation; MITSUI & CO (USA) INC.; MITSUI & CO. LTD., a corporation; MITSUI MINING

CO LTD; MITSUI MINING USA INC, a corporation, Defendants-Appellees.

No. 00-56673, No. 01-17115, No. 01-17116, No. 01-17123, No. 01-17124, No. 01-17134, No. 01-17155, No. 01-17157, No. 01-17160, No. 01-17172, No. 01-17176, No. 01-17177, No. 01-17185, No. 01-17189, No. 01-17195, No. 01-17197, No. 01-17201, No. 01-17203, No. 01-17204, No. 01-17207, No. 01-17210, No. 01-17211, No. 01-17230, No. 01-17243, No. 01-17251, No. 01-17252, No. 01-17260, No. 01-17265, No. 01-17499

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

317 F.3d 1005; 2003 U.S. App. LEXIS 850

January 21, 2003, Filed

PRIOR HISTORY:

Appeal from the United States District Court for the Central District of California. D.C. No. CV-00-04405-SVW. Stephen V. Wilson, District Judge, Presiding. Appeal from the United States District Court for the Northern District of California. D.C. No. CV-00-02163-VRW, D.C. No. CV-00-02357-

VRW, D.C. No. CV-00-03737-VRW, D.C. No. CV-00-00064-VRW, D.C. No. CV-00-02359-VRW, D.C. No. CV-00-02690-VRW, D.C. No. CV-00-03239-VRW, D.C. No. CV-99-05042-VRW, D.C. No. CV-00-03240-VRW, D.C. Nos. CV-00-02960-VRW, CV-00-03240-VRW, CV-00-03828-VRW, D.C. No. CV-00-03828-VRW, D.C. No. CV-00-02691-VRW, D.C. No. CV-99-01554-VRW, D.C. No. CV-00-02360-VRW, D.C. No. CV-99-05303-VRW, D.C. No. CV-01-02592-VRW, D.C. No. CV-00-03242-VRW, D.C. No. CV-00-03313-VRW, D.C. No. CV-00-02358-VRW, D.C. No. CV-00-04278-VRW, D.C. No. CV-99-05309-VRW, D.C. No. CV-00-03530-VRW, D.C. No. CV-00-03586-VRW, D.C. No. CV-00-03752-VRW, D.C. No. CV-00-04277-VRW, D.C. No. CV-00-03648-VRW, D.C. No. CV-00-02689-VRW, D.C. No. CV-00-02761-VRW. Vaughn R. Walker, District Judge, Presiding. *In re World War II Era Japanese Forced Labor Litig., 164 F. Supp. 2d 1153; 2001 U.S. Dist. LEXIS 14641.*

DISPOSITION:

Judgments of the district courts affirmed.

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JUDGES:
Before: Stephen Reinhardt, Stephen S. Trott and Barry G. Silverman, Circuit Judges. Opinion by Judge Reinhardt.

OPINIONBY:
Stephen Reinhardt

OPINION:

REINHARDT, Circuit Judge:

Plaintiffs-Appellants in these consolidated cases allege that they were forced to work as slave laborers for German and Japanese corporations during the Second World War. They seek damages and other remedies for lost wages and for other atrocious injuries they suffered in the course of their forced labor. Defendants-Appellees are corporations (or successors or affiliates of those corporations) that allegedly committed these atrocities.

A California statute passed in 1999 creates a cause of action against such defendants for claims involving Second World War slave labor. n1 Cal. Code Civ. Proc. § 354.6. Under the statute, these claims are not time-barred if commenced on or before December 31, 2010. *Id.* Although Appellants assert a variety of statutory and common law claims for relief, all raise section 354.6 as the primary basis for bringing their suits so many years after the alleged wrongs were committed. Reluctantly, we hold that section 354.6 is invalid under the United States Constitution and that in its absence Appellants' remaining claims are time-barred.

n1 Although the statute distinguishes between "slave laborers," *see* Cal. Code Civ. Proc. § 354.6(a)(1), and "forced laborers," *see* § 354.6(a)(2), the distinction is generally immaterial to the analysis in this opinion. We generally use the term "slave laborer" to refer to both categories of workers.

Background

These cases concern the terrible abuses that German and Japanese corporate interests inflicted both on civilians and on soldiers captured by German and Japanese military forces during the Second World War. The corporations and their managers, with the cooperation and encouragement of their governments, subjected many individuals to vicious cruelties and forced them to work long hours without pay. The slave workers were often underfed, physically beaten, exposed to dangerous conditions, and denied medical care; many were murdered, and others died as a result of the maltreatment they suffered. Among these slave laborers were, tragically, many who became victims of the Holocaust, the most atrocious act ever perpetrated by a civilized (or uncivilized) people, an act unparalleled in history. Indeed, the Holocaust represents the worst historic manifestation of the perpetual human condition known as anti-Semitism, a phenomenon that is still thriving in all too many parts of the world today. n2

n2 It is plainly Holocaust survivors who are the intended beneficiaries of section 354.6, which speaks of "concentration camps" and "ghettoss," mentions no power by name other than the "Nazi regime," and never employs the term "Axis Powers," which is the usual collective term for the enemies of the Allied Powers. Ironically, among the hundreds of thousands of plaintiffs in the cases before us, there is only one Holocaust survivor. All the other plaintiffs suffered their injuries in Asia at the hands of Japanese companies. Whatever the intended purpose of the California statute, the text of section 354.6 appears to be broad enough to encompass all the plaintiffs' claims, and not just those of the one Holocaust survivor. We follow the district court and all the parties before us in assuming that such is the case.

I. The Cases

A. *Deutsch v. Turner*

The suit by Appellant Josef Tibor Deutsch ("Deutsch") is the only action before us concerning wrongs committed by German rather than Japanese corporations and the only action that was not consolidated with other cases by the district court. It is, in other words, the only Holocaust case at issue here, and it, unlike most of the Japanese cases, involves only a single plaintiff.

Currently a resident of California, Deutsch, a Jew, was born and raised in Hungary. Deutsch asserts that, in 1944, when he was a child, the Nazis took over his town and transported him and his brother Georg to Auschwitz. There the brothers were tortured and forced to work as slaves for 14-hour days, seven days a week. Their work was for the benefit of private corporations, which entered into agreements with the Nazi government, whereby they paid the Nazis less than the prevailing wage for the work of the slaves. The corporations for which the Deutsch children labored included Appellee Hochtief AG ("Hochtief"), one of Germany's largest and oldest construction companies. A civilian employee of Hochtief overseeing the slave laborers in their work for Hochtief beat Deutsch's brother Georg. Georg ultimately died from his injuries. By a stroke of good fortune, Deutsch, unlike most of his coreligionists, survived.

On April 7, 2000, Deutsch filed a complaint in the Superior Court of California against Hochtief, its wholly owned subsidiary the Turner Corporation, a Delaware corporation, and the Kitchell Corporation, an Arizona corporation that Hochtief owns in part. Deutsch alleged intentional infliction of emotional distress, unlawful business practices under the California Business and Professions Code, quantum meruit, and wrongful death. The action was removed to federal court on the ground of diversity jurisdiction.

Deutsch's basis for bringing the action so long after the alleged acts is section 354.6 of the California Code of Civil Procedure, which confers jurisdiction on the Superior Court to hear claims by "any Second World War slave labor victim" or "Second World War forced labor victim," or their heirs, against "any entity or successor in interest thereof, for whom that labor was performed, either directly or through a subsidiary or affiliate." Cal. Code Civ. Proc. § 354.6(b). Section 354.6 permits such actions to be brought on or before December 31, 2010, regardless of any otherwise applicable statute of limitations. § 354.6(c).

The district court dismissed the action as presenting a non-justiciable political question. *Deutsch v. Turner*, No. CV 00-4405 (C.D. Cal. Aug. 25, 2000).

B. *In re World War II Era Japanese Forced Labor Litigation*

The consolidated appeal before us also involves 28 other suits, all by victims and heirs of victims against Japanese business entities. Some were brought as class actions. Because there are so many complaints, and because the precise factual allegations do not bear on our decision, we do not here recount the details of the injuries that the various Appellants endured. Unlike Deutsch, these individuals -- some civilians, some soldiers who were prisoners of war -- were not selected because of their religious affiliation and were not victims of an overall plan to exterminate an ethnic or religious group. Rather, they became subject to the Japanese slave labor program either because they opposed the Japanese war efforts, in one capacity or another, or simply because they were in the wrong place at the wrong time. In any event, they were all subjected to serious mistreatment, including starvation, beatings, physical and mental torture, being transported in unventilated cargo holds of ships, and being forced to make long marches under a tropical sun without water. Some survived, while others were ultimately executed, or died from disease or physical abuse.

Twenty-seven of the suits against the Japanese corporate interests were originally brought in California Superior Court, while one was initiated in the United States District Court for the Central District of California. The claimants demanded damages and other relief, raising claims under California Code of Civil Procedure section 354.6, and alleging, variously, assault and battery, unjust enrichment, conspiracy, false imprisonment, intentional infliction of emotional distress, conversion, quantum meruit, unfair business practices under California Business and Professions Code sections 17200 *et seq.*, involuntary servitude under California Penal Code section 181 and Article I, § 6 of the California Constitution, and violations of international law under the Alien Tort Claims Act, *28 U.S.C. § 1350.* As defendants they name both Japanese corporations that they allege committed the injuries and successors and affiliates of those corporations. The suits filed in state court were removed to federal court; all were then consolidated in the Northern District of California. The district court denied motions to remand and dismissed all claims.

Appellants in the majority of the Japanese cases were, at the time of the occurrences that form the basis for these lawsuits, nationals of the United States or of other Allied nations. Many were in military service and were taken as prisoners of war. The district judge dismissed these cases on the ground that they were barred by a provision of the Treaty of Peace ending the war between the Allied Powers and Japan. n3 *In re World War II Era Japanese Forced Labor Litig., 114 F. Supp. 2d 939, 944-49 (N.D. Cal. 2000)* (*Forced Labor (Allied I)*); *In re World War II Era Japanese Forced Labor Litig.*, No. MDL-1347 (N.D. Cal. Feb. 8, 2001) (*Forced Labor (Allied* II)); *In re World War II Era Japanese Forced Labor Litig., 164 F. Supp. 2d 1153, 1157 (N.D. Cal. 2001)* (*Forced Labor (Filipinos)*).

n3 The provision that had this effect is Article 14(b), which provides as follows:

> Except as otherwise provided in the present Treaty, the Allied Powers waive all reparations claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war, and claims of the Allied Powers for direct military costs of occupation.
>
> Treaty of Peace with Japan, Sept. 8, 1951, art. 14(b), *3 U.S.T. 3169,* T.I.A.S. No. 2490. The district court held that claims by Allied nationals against Japanese corporations were barred under the clause waiving "other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war." *Forced Labor (Allied I), 114 F. Supp. 2d at 944-49 (N.D. Cal. 2000).*

Appellants in the remaining cases were Korean and Chinese nationals. The district court held that their claims were not affected by the Treaty of Peace between the Allies and Japan, because these claimaints were not Allied nationals or nationals of any signatory of that treaty. *In re World War II Era Japanese Forced Labor Litig., 164 F. Supp. 2d 1160, 1165-68 (N.D. Cal. 2001)* (*Forced Labor (Koreans)*). The court dismissed these cases nonetheless, on the grounds that section 354.6 was an unconstitutional intrusion on the foreign affairs powers of the United States, and that the remaining claims were time-barred. *Id. at 1168-78.*

II. Constitutionality of Section 354.6 Under Foreign Affairs Doctrine

A. Section 354.6 and Its Effect

All Appellants rely on section 354.6 of the California Code of Civil Procedure. Because it can best be understood when read as a whole, we quote it in full:

§ 354.6.

(a) As used in this section:

(1) "Second World War slave labor victim" means any person taken from a concentration camp or ghetto or diverted from transportation to a concentration camp or from a ghetto to perform labor without pay for any period of time between 1929 and 1945, by the Nazi regime, its allies and sympathizers, or enterprises transacting business in any of the areas occupied by or under control of the Nazi regime or its allies and sympathizers.

(2) "Second World War forced labor victim" means any person who was a member of the civilian population conquered by the Nazi regime, its allies or sympathizers, or prisoner-of-war of the Nazi regime, its allies or sympathizers, forced to perform labor without pay for any period of time between 1929 and 1945, by the Nazi regime, its allies and sympathizers, or enterprises transacting business in any of the areas occupied by or under control of the Nazi regime or its allies and sympathizers.

(3) "Compensation" means the present value of wages and benefits that individuals should have been paid and damages for injuries sustained in connection with the labor performed. Present value shall be calculated on the basis of the market value of the services at the time they were performed, plus interest from the time the services were performed, compounded annually to date of full payment

without diminution for wartime or post-war currency devaluation.

(b) Any Second World War slave labor victim, or heir of a Second World War slave labor victim, Second World War forced labor victim, or heir of a Second World War forced labor victim, may bring an action to recover compensation for labor performed as a Second World War slave labor victim or Second World War forced labor victim from any entity or successor in interest thereof, for whom that labor was performed, either directly or through a subsidiary or affiliate. That action may be brought in a superior court of this state, which court shall have jurisdiction over that action until its completion or resolution.

(c) Any action brought under this section shall not be dismissed for failure to comply with the applicable statute of limitation, if the action is commenced on or before December 31, 2010.

Appellants and the State of California as amicus seek to characterize section 354.6 as a purely procedural measure by reducing its scope to the provision regarding the limitations, as set forth in subsection (c). The entire effect of section 354.6, they argue, is to extend the statute of limitations for claims that are already available to remedy Nazi-era slave labor. They cite an impressive range of possible sources of substantive law prohibiting slave labor, including state statutes and common law, the United States Constitution, and international law. The reference in subsection (c) to "the applicable statute of limitations" supports their interpretation: If a statute of limitations is already "applicable," perhaps it is because subsection (c) contemplates a pre-existing cause of action, rather than a cause of action created under section 354.6.

However, section 354.6 can be viewed as purely procedural only when subsection (c) is viewed in isolation from the rest of the provision. Most important, the first

sentence of subsection (b) explicitly creates a cause of action by providing that certain individuals "may bring an action" for certain wrongs. *See Verizon Md. Inc. v. Pub. Serv. Comm'n, 535 U.S. 635, ___, 535 U.S. 635, 122 S. Ct. 1753, 1759, 152 L. Ed. 2d 871 (2002)* (noting that language in a statute providing that party "may bring an action" "reads like the conferral of a private right of action"). Appellants' recitation of pre-existing causes of action for slave labor, whether under other statutes or other bodies of law, is therefore fruitless. Regardless of any pre-existing law, the California legislature chose to create a specific cause of action for persons subjected to slave labor by the Nazis and their allies and sympathizers. If confirmation of this reading is required, it is found in those passages of section 354.6 that set forth the details of the new cause of action. The section defines the class of plaintiffs who may sue under that cause of action, *see* § 354.6(a)(1), (2), sets the method for measuring damages, *see* § 354.6(a)(3), and establishes a special rule regarding liability of corporations affiliated with the wrong-doer, *see* § 354.6(b). Even the language of the statute of limitations provision itself limits the application of the statute of limitations to "actions brought under this section," thus confirming that section 354.6 creates a cause of action.

Appellants' only remaining argument for the procedural nature of section 354.6 is its placement within the Code of Civil Procedure, in Title Two: Time of Commencing Civil Actions. However, [HN1] where the meaning of a statutory provision is clear, we do not rely upon the location the legislature chose for it in its system of codification, *see Bass v. Stolper, Koritzinsky, Brewster & Neider, S.C., 111 F.3d 1322, 1328 (7th Cir. 1997),* just as we do not rely upon the headings and titles of sections in such circumstances. *Brotherhood of R.R. Trainmen v. Baltimore & Ohio R.R., 331 U.S. 519, 528-29, 91 L. Ed. 1646, 67 S. Ct. 1387 (1947).* The reason for the placement of section 354.6 within the procedural code is, in any event, not difficult to explain: The

most striking aspect of the section is, indeed, its statute of limitations, which would allow the commencement of a suit more than 60 years after the occurrence of the injury. *Id.* Section 354.6's placement, therefore, does not change our view that the section is substantive in nature.

The parties debate whether section 354.6 is substantive or procedural primarily in the context of the Appellees' due process challenge, which we do not address. The substantive nature of the provision, however, is relevant also to the foreign affairs doctrine analysis in which we engage below, because a state is more likely to exceed the limits of its power when it seeks to alter or create rights and obligations than when it seeks merely to further enforcement of already existing rights and duties. Because section 354.6 is substantive law, we do not have occasion to address whether the extension of the statute of limitations, without more, would be legally permissible. n4

n4 Even if it were merely procedural, section 354.6 would go further than merely extending the statute of limitations for existing claims; it would actually revive claims that had been previously time-barred, thus upsetting the repose of potential defendants. This revival of liability -- even civil liability -- is troubling. We do not address here whether such a revival violates due process.

B. Foreign Affairs Doctrine Analysis

Appellees argue that section 354.6 exceeds California's power to engage in foreign affairs. We agree. n5

n5 Some Appellants assert that federal jurisdiction is lacking over their claims. We address that issue below.

The Constitution does not create an express, general power over foreign affairs but rather allocates particular powers related to foreign affairs to particular federal actors. It appoints the President as "Commander in Chief of the Army and Navy of the United States," U.S. Const., art. II, § 2, cl. 1, and authorizes him to "make Treaties, provided two thirds of the Senators present concur," to "appoint Ambassadors" with the "Advice and Consent of the Senate," *id.* cl. 2, and to "receive Ambassadors and other public Ministers," *id.* § 3. It grants to Congress the power to "lay and collect ... Duties, Imposts, and Excises," to "provide for the common Defence," *id.* art. I, § 8, cl. 1, to "regulate Commerce with foreign Nations," *id.* art. I, § 8, cl. 3, to "establish an uniform Rule of Naturalization," *id.* cl. 4, to "define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations," *id.* cl. 10, to "declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water," *id.* cl. 11, to "raise and support Armies," *id.* cl. 12, to "provide and maintain a Navy," *id.* cl. 13, and to regulate "the land and naval forces," *id.* cl. 14.

While the Constitution allocates these foreign affairs powers specifically to the federal government, it also expressly prohibits the states from exercising certain foreign relations powers, including both some of those expressly allocated to the federal government and a few others. [HN2] "No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal" or, without consent of Congress, "lay any Imposts or Duties on Imports or Exports," "keep Troops or Ships of War in time of Peace," "enter into any Agreement or Compact ... with a foreign Power," or "engage in War, unless actually invaded." *Id.* § 10.

Because the Constitution mentions no general foreign affairs power, and because only a few specified powers

related to foreign affairs are expressly denied the states, one might assume that, with certain exceptions, states are free to pursue their own foreign policies. This is not, however, the case. To the contrary, the Supreme Court has long viewed the foreign affairs powers specified in the text of the Constitution as reflections of a generally applicable constitutional principle that power over foreign affairs is reserved to the federal government. The Court has sometimes expressed this principle in expansive terms, declaring, for example, that [HN3] "power over external affairs is not shared by the States; it is vested in the national government exclusively." *United States v. Pink, 315 U.S. 203, 233, 86 L. Ed. 796, 62 S. Ct. 552 (1942); see also Chae Chan Ping v. United States, 130 U.S. 581, 606 (1889)* (*The Chinese Exclusion Case*) ("For local interests the several States of the Union exist, but for national purposes, embracing our relations with foreign nations, we are but one people, one nation, one power.").

The implication of the general principle is that [HN4] "even in [the] absence of a treaty" or federal statute, a state may violate the constitution by "establishing its own foreign policy." *Zschernig v. Miller, 389 U.S. 429, 441, 19 L. Ed. 2d 683, 88 S. Ct. 664 (1968).* n6 *Zschernig* concerned an Oregon statute that provided for escheat of estate property claimed by a nonresident alien unless United States citizens had reciprocal rights in the country of the alien's residence and foreign heirs in that country would have the right to receive the proceeds of Oregon estates without confiscation. *Id. at 430-31.* The Court held that, while a reciprocity statute of this sort was not facially invalid, probate courts applying it impermissibly relied on inquiries into the type of governments that obtain in particular foreign nations -- whether aliens under their law have enforceable rights, whether the so-called "rights" are merely dispensations turning upon the whim or caprice of government officials, whether the representation of consuls, ambassadors, and other representatives of foreign nations is credible or made in

good faith, whether there is in the actual administration in the particular foreign system of law any element of confiscation.

Id. at 434. In short, the Court found that the application of the statute depended less on an evaluation of the stated law of a particular country than on whether that country's political system was legitimate in the view of the Oregon courts. *See id. at 440* (noting that state courts had held that communist and fascist countries did not grant rights reciprocal to those of Oregonians). To condition the application of state law on the political system of a foreign country was "an intrusion by the State into the field of foreign affairs which the Constitution entrusts to the President and the Congress." *Id. at 432.*

> n6 The doctrine has been referred to as "dormant foreign affairs preemption," or simply as "the foreign affairs power." *See Gerling Global Reinsurance Corp. of Am. v. Low, 240 F.3d 739, 751 n.9 (9th Cir. 2001)* (internal quotation marks removed), *cert. granted sub nom. Am. Ins. Ass'n v. Low, 71 U.S.L.W. 3373 (2003).*

Despite the broad language of *Pink* and the *Chinese Exclusion Case*, however, *Zschernig* is "the only case in which the Supreme Court has struck down a state statute as violative of the foreign affairs power." *Int'l Ass'n of Indep. Tanker Owners v. Locke, 148 F.3d 1053, 1069 (9th Cir. 1998), rev'd in part on other grounds sub nom. United States v. Locke, 529 U.S. 89, 146 L. Ed. 2d 69, 120 S. Ct. 1135 (2000). Zschernig* has been applied sparingly, because the Supreme Court has held that [HN5] a statute does not violate the constitution where it merely has "some incidental or indirect effect in foreign countries." *Clark v. Allen, 331 U.S. 503, 517, 91 L. Ed. 1633, 67 S. Ct. 1431 (1947)*

(upholding facially a statute similar to that subsequently struck as applied in *Zschernig*). n7

> n7 Other courts have, however, invalidated statutes under foreign affairs doctrine. *See, e.g., Nat'l Foreign Trade Council v. Natsios, 181 F.3d 38, 49-61 (1st Cir. 1999)* (invalidating Massachusetts law restricting ability of Massachusetts and its agencies to purchase goods or services from individuals or companies engaged in business with Burma), *aff'd on other grounds sub nom. Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 147 L. Ed. 2d 352, 120 S. Ct. 2288 (2000); Springfield Rare Coin Galleries, Inc. v. Johnson, 115 Ill. 2d 221, 236-37, 104 Ill. Dec. 743, 503 N.E.2d 300 (1986)* (invalidating state statute excluding South African coins from otherwise generally applicable state tax exemptions).

Noting that "the federal government's foreign affairs power .... is rarely invoked by the courts," we have declined to invalidate under *Zschernig* a California statute with certain superficial similarities to section 354.6. *Gerling Global Reinsurance Corp. of Am. v. Low, 240 F.3d 739, 752 (9th Cir. 2001), cert. granted sub nom. Am. Ins. Ass'n v. Low, 71 U.S.L.W. 3373 (2003). Gerling* concerned California's Holocaust Victim Insurance Relief Act, Cal. Ins. Code § § 13800-13807 ("HVIRA"), which requires insurers doing business in California to file certain information about any insurance policies that they or companies "related" to them sold in Europe and that were in effect between 1920 and 1945. *Id.*; *see Gerling, 240 F.3d at 743, 753.* While recognizing that HVIRA involved foreign affairs, we held that it was constitutional because of the combination of two factors: first, "HVIRA, on its face, involves commerce alone" -- and thus should be considered under the Supreme

Court's foreign commerce cases rather than under the foreign affairs cases; and second, HVIRA "is not, on its face, directed at any particular foreign country" -- and thus is comparatively unlikely to interfere with the foreign relations of the federal government. *Id. at 753.*

While *Gerling* shows that the general prohibition against state involvement with external affairs is not as broad as some judicial statements would imply, it also suggests a mode of analysis that is relevant to the cases before us. In particular, *Gerling* distinguishes among statutes according to the foreign affairs functions that they implicate. *Gerling* suggests that statutes that "mainly involve foreign commerce" are among those least likely to be held invalid under the foreign affairs power. *Id.* The regulation of commerce is simply not central to the foreign affairs power that is off limits to states. n8 For present purposes, we must consider the importance to foreign affairs analysis of another subset of foreign affairs powers: the power of the federal government to make and to resolve war, including the power to establish the procedure for resolving war claims.

> n8 State regulation of foreign commerce might, however, exceed constitutional limitations under other constitutional doctrines. *See, e.g., Barclays Bank PLC v. Franchise Tax Bd., 512 U.S. 298, 328, 129 L. Ed. 2d 244, 114 S. Ct. 2268 (1994)* (considering whether state's international tax reporting system violated either dormant commerce clause or federal government's ability to speak in "one voice.")

While neither the Constitution nor the courts have defined the precise scope of the foreign relations power that is denied to the states, it is clear that matters concerning war are part of the inner core of this power. Of the eleven clauses of the Constitution granting foreign affairs powers to the

President and Congress, *see supra*, seven concern preparing for war, declaring war, waging war, or settling war. n9 Most of the Constitution's express limitations on states' foreign affairs powers also concern war. n10 Even those foreign affairs powers in the Constitution that do not expressly concern war and its resolution may be understood, in part, as a design to *prevent* war. Indeed, as the *Federalist* shows, supporters of the new Constitution believed that disunity in international affairs risked unnecessary war. *See, e.g.,* THE FEDERALIST, NO. 3, at 13 (Clinton Rossiter ed., 1961) ("Fewer just causes of war will be given by the national government, [and] it will also be more in their power to accommodate and settle them amicably."). The Supreme Court cases under the foreign affairs power have also been driven, in part, by this concern. Thus the inheritance provision at issue in *Zschernig*, although superficially unrelated to war, was seen by a Court operating at the height of the Cold War as a potential provocation to foreign powers. "'Experience has shown,'" the Court wrote in striking the provision, "'that international controversies of the gravest moment, sometimes even leading to war, may arise from real or imagined wrongs to another's subjects inflicted, or permitted, by a government.'" *389 U.S. at 441* (quoting *Hines v. Davidowitz, 312 U.S. 52, 64, 85 L. Ed. 581, 61 S. Ct. 399 (1941)).* [HN6] Matters related to war are for the federal government alone to address.

n9 *See* U.S. Const., art. II, § 2, cl. 1 (making President Commander in Chief); *id.* cl. 2; (authorizing President to make treaties with advice and consent of Senate); *id.* art. I, § 8, cl. 1 (authorizing Congress to "provide for the common Defence"); *id.* cl. 11 (authorizing Congress to declare war); *id.* cl. 12 (authorizing Congress to raise and support armies); *id.* cl. 13 (authorizing Congress to "provide and maintain

a Navy"); *id.* cl. 14 (authorizing Congress to regulate "the land and naval forces").

n10 *See id.* § 10 (prohibiting states from entering "any Treaty, Alliance, or Confederation," or, without congressional authorization, from "keeping Troops or Ships of War in time of Peace" and from "engaging in War, unless actually invaded.")

Among the six district court decisions we review here, the only one to reach the foreign affairs challenge to section 354.6 held that the provision was unconstitutional under that doctrine for six reasons:

(1) the terms of section 354.6 and its legislative history demonstrate a purpose to influence foreign affairs directly, (2) the statute targets particular countries, (3) the statute does not regulate an area that Congress has expressly delegated to states to regulate, (4) the statute establishes a judicial forum for negative commentary about the Japanese government and Japanese companies, (5) the Japanese government asserts that litigation of these claims could complicate and impede diplomatic relationships of the countries involved, and (6) the United States, through the State Department, contends that section 354.6 impermissibly intrudes upon the foreign affairs power of the federal government.

Forced Labor (Koreans), 164 F. Supp. 2d at 1173. Although we agree that section 354.6 violates the foreign affairs power, we base our holding on a narrower consideration. We hold that [HN7] section 354.6 is impermissible because it intrudes on the federal government's exclusive power to make and resolve war, including the procedure for resolving war claims.

With section 354.6, California seeks to redress wrongs committed in the course of the Second World War. By its terms, only "Second World War slave labor victims" and "Second World War forced labor victims" can bring suit under the provision. § 354.6(b). The wrong-doers under the statute -- the enslaving individuals or entities -- include "the Nazi regime, its allies and sympathizers, or enterprises transacting business in any of the areas occupied by or under control of the Nazi regime or its allies or sympathizers." § 354.6(a)(1), (2). The governmental entities are, by definition, wartime enemies of the United States, while the "enterprises" identified in the provision, if not themselves our wartime enemies, were operating in enemy territory and presumably -- no party disputes this -- with the consent and for the benefit of our wartime enemy. Wrongs committed after the end of the war are not cognizable under section 354.6; the provision concerns only acts that took place during the years leading up to the war and during the years of the war itself. *Id.* In short, California has sought to create its own resolution to a major issue arising out of the war -- a remedy for wartime acts that California's legislature believed had never been fairly resolved.

The United States has already exercised its own exclusive authority to resolve the war, including claims arising out of it. It did not choose, however, to incorporate into that resolution a private right of action against our wartime enemies or their nationals. The United States resolved the war against Germany by becoming a party to a number of treaties and international agreements, beginning with the 1945 agreements at Yalta and Potsdam, in which the United States, Britain, and the Soviet Union agreed to extract reparations from Germany and its nationals but did not include a private right of action against either. *See* Protocol of the Proceedings, Berlin (Potsdam) Conference, Aug. 2, 1945, art. (B)(111), *3 Bevans 1207.* Subsequent agreements also failed to create a private right of action, including the Paris Reparations Treaty of 1946 between the United States

and 17 other nations, Agreement on Reparations From Germany, Jan. 14, 1946, 61 Stat. 3157, T.I.A.S. 1655 ("Paris Reparations Treaty"); the Transition Agreement of 1952 between the Western Powers and the Federal Republic of Germany, Convention Between the United Kingdom of Great Britain and Northern Ireland, France, the United States of America and the Federal Republic of Germany on the Settlement of Matters Arising Out of the War and the Occupation, May 26, 1952 (as amended by Schedule IV to the Protocol on the Termination of the Occupation Regime in the Federal Republic of Germany, Oct. 23, 1954), *6 U.S.T. 4117,* 331 U.N.T.S. 219; the London Debt Agreement of 1953 between the United States and 20 other nations, Agreement on German External Debts, Feb. 27, 1953, *4 U.S.T. 443,* 333 U.N.T.S. 3; and the Two-Plus-Four Treaty, which reunified Germany and became effective on March 15, 1991, Treaty on the Final Settlement with Respect to Germany, Sept. 12, 1990, *29 I.L.M. 1186.* n11 Most recently, the Foundation Agreement of July 17, 2000, an executive agreement between the governments of Germany and the United States, provided a limited form of remedy for claimants such as Deutsch. Agreement Between the Government of the United States of America and the Government of the Federal Republic of Germany Concerning the Foundation "Remembrance, Responsibility and the Future." The Foundation was created by Germany, in negotiation with the United States, five Central and Eastern European countries, Israel, and the non-governmental Conference on Jewish Material Claims Against Germany, for the purpose of making payments to people who suffered at the hands of German companies during the Nazi Era. It provides for payment of up to 15,000 German Marks (roughly $ 7500) to individual claimants who were subjected to forced labor. *See id.* at Annex A. We do not have the authority to consider the adequacy of such payments here. Indeed, we acknowledge that no possible compensation

could be sufficient to remedy the harm done to Holocaust victims and their families.

n11 For useful and accessible surveys of these agreements as they apply to war reparations, see *Iwanowa v. Ford Motor Co., 67 F. Supp. 2d 424, 448-56 (D.N.J. 1999),* and *Burger-Fischer v. Degussa AG, 65 F. Supp. 2d 248, 265-73 (D.N.J. 1999).* The district court in *Deutsch* relied heavily on these cases and adopted their conclusion that Deutsch's claim raised a nonjusticiable political question, *Deutsch*, No. CV 00-4405, at 2-6, a conclusion with which we disagree. The district court determined that the postwar agreements created the exclusive remedy to the matters raised by Deutsch, and that to order relief would therefore require the court to interfere with the foreign affairs choices of the political branches. *Id.* [HN8] Under political question doctrine, the court noted, it is impermissible for a court to make policy related to foreign affairs. *Id.* at 2 (citing *Baker v. Carr, 369 U.S. 186, 211, 7 L. Ed. 2d 663, 82 S. Ct. 691 (1962)).* Therefore, the district court supposed, *Deutsch* raised a nonjusticiable political question. The problem with this argument is that it makes every dispute over the proper application of a treaty into a political question, because treaties inherently involve foreign affairs. [HN9] No political question, however, is raised by the simple application of the requirements of a treaty to which the United States is a party. Treaties have the force of law, *see Missouri v. Holland, 252 U.S. 416, 64 L. Ed. 641, 40 S. Ct. 382, 18 Ohio L. Rep. 61 (1920),* and, if they are self-executing or have been implemented through legislation, must be applied by the courts. *See United States v. Alvarez-Machain, 504 U.S. 655, 667, 119 L. Ed. 2d 441, 112 S. Ct. 2188 (1992).*

No party argues that any of these agreements provides the authority for a state of the United States to create a private right of action enabling individuals to recover for wartime injuries against German corporations. Deutsch argues, however, that the terms of these various agreements do not *prohibit* a state from creating such a right of action, and that in the absence of such a prohibition, his action may proceed. Deutsch's argument cannot carry the day. As we explained earlier, the Constitution allocates the power over foreign affairs to the federal government exclusively, and the power to make and resolve war, including the authority to resolve war claims, is central to the foreign affairs power in the constitutional design. In the absence of some specific action that constitutes authorization on the part of the federal government, states are prohibited from exercising foreign affairs powers, including modifying the federal government's resolution of war-related disputes.

The war with Japan ended with the Treaty of Peace, signed in San Francisco, on September 8, 1951, by the representatives of the United States and 47 other Allied powers and Japan, and ratified by the United States Senate on April 28, 1952. Treaty of Peace with Japan, Sept. 8, 1951, *3 U.S.T. 3169,* T.I.A.S. No. 2490. Although the parties dispute whether that treaty by its own terms precludes the claims brought by any of the Appellants, n12 that is the only dispute regarding the treaty. No party asserts that the treaty either creates -- explicitly or implicitly -- a private right of action against Japan or its nationals, or authorizes states of the United States to create such a right. n13 Once again, without such authorization, states lack the power to alter the federal government's resolution of disputes relating to the war. n14

n12 The central disagreement concerns the meaning of Article 14(b) of the treaty, which is quoted in full *supra* note 3. The district judge held that Appellants' claims were waived because they are claims of Allied nationals "arising out of actions taken by [Japanese] nationals in the course of the prosecution of the war." *Id.*; *Forced Labor (Allied I), 114 F. Supp. 2d at 944-49.* Appellants argue that the actions of the Appellee corporations were not taken "in the course of the prosecution of the war," or that it is an issue of fact whether they were or not. n13 Appellants do assert that, if Article 14 of the treaty waives claims against Japanese nationals, as Appellees assert, then Article 14 is superceded by Article 26. Article 26 provides, in pertinent part:

Should Japan make a peace settlement or war claims settlement with any State granting that State greater advantages than those provided by the present Treaty, the same advantages shall be extended to the parties to the present Treaty.

Treaty of Peace with Japan, at art. 26. Appellants argue that other foreign states have entered into agreements with Japan that do not waive private claims and that those agreements thereby extend to those foreign states "greater advantages" than the terms extended to the United States. The district court found that Article 26 confers rights only on the "parties" to the treaties, not on individuals. *Forced Labor (Allied I), 114 F. Supp. 2d at 949.* We agree, at least as to the right to invoke the clause. It is the prerogative of the United States, not of California or of Appellants, to determine whether a foreign state has been granted greater advantages and, if so, whether it is in the interest of the United States to incorporate those advantages (along with any concomitant lesser

disadvantages) into the treaty. The United States has not invoked Article 26 to authorize a private right of action. Appellants' reliance on the article is, therefore, unavailing. n14 It is immaterial that many of the Appellants are nationals of two nations, China and Korea, that were not signatories of the San Francisco treaty. When the United States has been a party to a war, the resolution it establishes to that war is the resolution for the whole of the United States. States lack the power to modify that resolution, regardless of the citizenship of those seeking redress.

The grievances of at least one class of potential plaintiffs identified in section 354.6, prisoners of war, were addressed by the federal government in domestic legislation. *See* § 354.6(a)(2). [HN10] Under the War Claims Act of 1948, *50 U.S.C. app. § § 2001*-2017p, assets seized from Germany, Japan, or their nationals within the United States and its territory were used to compensate American prisoners of war whose rights had been violated. *See* U.S. FOREIGN CLAIMS SETTLEMENT COMMISSION, SETTLEMENT OF CLAIMS BY THE FOREIGN CLAIMS SETTLEMENT COMMISSION FROM SEPTEMBER 14, 1949 TO MARCH 31, 1955, at 10-11 (1955); *50 U.S.C. app. § 2005*(d)(2)(A). The Act required prisoners of war to submit their claims to a federal agency, whose decision was final; it conceived of no private right of action against German or Japanese entities. *See 50 U.S.C. app. § 2010.*

California was dissatisfied with how the federal government chose to address the various wartime injuries suffered by victims of the Nazis and their allies after the United States brought the Second World War to a close. The California legislature found that, under the treaties and compensatory programs that the federal government had established, "victims of Nazi persecution have been deprived

of their entitlement to compensation for their labor and for injuries sustained while performing that labor as forced or slave laborers prior to and during the Second World War." 1999 Cal. Stat. 216, § 1(b) (codified in notes to Cal. Code Civ. Proc. § 354.6). The state legislature therefore enacted section 354.6 to remedy these 54-year-old injuries in a manner favored by California but not provided for by the federal government. Appellants assert that no international agreement or other federal action prohibits California from doing so. However, as we have stated, because the issue is the lack of state power, it is immaterial whether the federal government enacted a prohibition. The federal government, acting under its foreign affairs authority, provided its own resolution to the war; California has no power to modify that resolution. n15

n15 One might argue that the Holocaust was distinct from the German war effort, that claims for injuries arising from the Holocaust do not, therefore, relate to the war, and that such injuries, because they are unrelated to the war, do not implicate the war powers of the federal government. We need not assume that the acts of enslavement encompassed by section 354.6 served military purposes or advanced the war effort of the Nazis or their allies. We simply note that, by its terms, section 354.6 creates a right of action only for "Second World War" slave labor victims. For the purposes of the provision, the California legislature explicitly defined the harms suffered by such victims as pertaining to the war. Moreover, the federal government's exclusive power to resolve the war necessarily includes an exclusive power to address the injuries that section 354.6 attempts to remedy. The treaties themselves confirm that the federal government regarded all wartime injuries as matters integral to peacemaking, regardless

of the purpose or effect of the wrong-doer's acts. In the Paris Reparations Treaty, for example, the United States and the other signatories "agreed among themselves that their shares of reparation, as determined by the present Agreement, shall be regarded by each of them as covering all its claims and those of its nationals against the former German Government and its Agencies, of a governmental or private nature arising out of the war." Paris Reparations Treaty, Jan. 14, 1946, art. 2(A), 61 Stat. 3157, 3163; *see also, e.g.,* Treaty of Peace with Hungary, Feb. 10, 1947, art. 30(4), 61 Stat. 2109, 2126 (bilateral treaty between Allied Powers and Hungary) ("Hungary waives on its own behalf and on behalf of Hungarian nationals all claims against Germany and German nationals outstanding on May 8, 1945, except those arising out of contracts and other obligations entered into, and rights acquired, before September 1, 1939.").

Before concluding our discussion of this issue, we must consider Appellants' most vigorous argument in favor of the constitutionality of section 354.6: that the provision "presents striking parallels" to HVIRA, the insurance reporting requirement that we upheld in *Gerling*. Appellants correctly note two points of similarity: first, like section 354.6, HVIRA is related to Nazi-era wrongs; second, as under section 354.6, at least as applied to the cases before us, the parties regulated by HVIRA are businesses. The similarity ends there, however. Unlike section 354.6, HVIRA does not attempt to require the affected businesses to compensate victims for past wrongs: Specifically, as we noted in *Gerling*, HVIRA does not impose obligations on "European insurance companies to pay or not to pay claims on European policies." *Gerling, 240 F.3d at 745* (internal

quotation marks removed). HVIRA, rather, is merely a reporting requirement and the only consequence of non-compliance is the inability to do business in California in the future. *Id.* Whereas section 354.6 seeks to provide a monetary remedy for decades-old wartime wrongs, HVIRA is a forward-looking regulatory statute. n16 In short, unlike section 354.6, HVIRA does not attempt to hold defendants liable for their past wartime conduct; it therefore does not implicate the exclusive power of the federal government to make and resolve war, including the resolution of claims arising out of such actions.

> n16 Appellants in *Gerling* originally challenged two other statutes that did attempt to force payment of Nazi-era insurance claims, *see* Cal. Code Civ. Proc. § 354.5; Cal. Ins. Code § 790.15, but those claims were dismissed for lack of standing and not addressed on appeal. *Gerling, 240 F.3d at 745; see also Gerling Global Reinsurance Corp. of Am. v. Low, 296 F.3d 832, 842 & n.7 (9th Cir. 2002), cert. granted sub nom. Am. Ins. Ass'n v. Low, 71 U.S.L.W. 3373 (2003).*

Because California lacks the power to create a right of action for war-related claims against our former enemies and those who operated in their territories, and section 354.6 runs afoul of the restriction on the exercise of foreign affairs powers by the states, we hold that [HN11] section 354.6 is unconstitutional.

III. Statutes of Limitations

In addition to section 354.6, Appellants bring various tort claims under common law, California statutory and constitutional law, as well as for violations of international

law under the Alien Tort Claims Act, *28 U.S.C. § 1350* ("ATCA"). *See supra*. All these claims are barred by their respective statutes of limitations.

Appellants apparently bring their common law claims under California law, although in many instances they do not identify the jurisdiction under whose law they seek relief. Some of the parties, including both defendants and plaintiffs, are California residents, while others are not; the alleged injuries all took place outside of California. [HN12] Regardless of the source of the substantive law, because all the claims, including both common law and statutory, were brought in California state court or in a district court within California, we apply to them the statute of limitations that would be applied in California state court. n17 [HN13] California applies the "governmental interest" approach to conflict of law issues. *Hurtado v. Superior Court, 11 Cal.3d 574, 579-80, 114 Cal. Rptr. 106, 522 P.2d 666 (1974).* Under this approach, the correct choice of law depends on "an analysis of the respective interests of the states involved." *Id. at 579.* Where the conflict concerns a statute of limitations, the governmental interest approach generally leads California courts to apply California law. Witkin, 3 CALIFORNIA PROCEDURE § 104 (4th ed. 1996); *see, e.g., Peterson v. Kennedy, 771 F.2d 1244, 1251 n.4 (9th Cir. 1985); American Bank of Commerce v. Corondoni, 169 Cal. App. 3d 368, 215 Cal. Rptr. 331 (Ca. Ct. App. 1985),* and especially so where California's statute would bar a claim. California's interest in applying its own law is strongest when its statute of limitations is shorter than that of the foreign state, because a "state has a substantial interest in preventing the prosecution in its courts of claims which it deems to be 'stale.' Hence, subject to rare exceptions, the forum will dismiss a claim that is barred by its statute of limitations." RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 142, cmt. f (1988).

n17 The district court addressing the claims brought by Korean and Chinese Appellants found that the non-federal claims would be time-barred under Chinese and Japanese law, as well as under the law of California. *Forced Labor (Koreans), 164 F. Supp. 2d at 1182.*

All the claims in the cases before us, other than those under the ATCA, have been stale for several decades under the applicable California statutes of limitations. *See* Cal. Code Civ. Proc. § 340 (one-year statute for personal injury torts, wrongful death and false imprisonment); *id.* § 338 (three-year statute for taking of or injury to personal property, and for fraud); Cal. Bus. & Prof. Code § 17208 (four-year statute for claims of unfair business practices). Only an extraordinarily strong interest of a foreign state in keeping these claims alive could overcome the presumption that California will not hear claims that have been stale for so long under its own law. No such strong foreign interest has been demonstrated here.

[HN14] The statute of limitations under the ATCA is 10 years. *Doe v. Unocal Corp.*, ___ F.3d ___, *2002 U.S. App. LEXIS 19263,* at *27 (9th Cir. 2002). n18 Appellants have thus brought these claims far too late as well. n19

n18 The 10-year limit is not stated in the provision. Rather, we adopted it from the Torture Victim Protection Act, *see* Pub.L. No. 102-256, 106 Stat. 73 (1992) (codified at *28 U.S.C. § 1350,* statutory notes) ("TVPA"), which has an explicit 10-year statute. *Papa v. United States, 281 F.3d 1004, 1011-13 (9th Cir. 2002).* We did so because [HN15] where a federal statute lacks a specified statute of limitations,

courts apply the limitations period provided by the jurisdiction in which they sit unless "a rule from elsewhere in federal law clearly provides a closer analogy than available state statutes, and when the federal policies at stake and the practicalities of litigation make that rule a significantly more appropriate vehicle for interstitial lawmaking."

Papa, 281 F.3d at 1011-12 (citing *North Star Steel Co. v. Thomas, 515 U.S. 29, 35, 132 L. Ed. 2d 27, 115 S. Ct. 1927 (1995)).* We held that ATCA was closely analogous to the TVPA both in its purpose and in its mechanism for achieving that purpose. *Papa, 281 F.3d at 1012.* Appellants ask us to reconsider our decision in *Papa*, at least as it applies to the present cases, and hold that the ATCA is more closely analogous to section 354.6 than to the TVPA. The result, Appellants argue, would be that the claims are not barred until 2010. For the reasons we stated in *Papa*, and because we hold that section 354.6 is unconstitutional, we reaffirm that the ATCA statute of limitations in this case, as in other cases, is 10 years.

n19 Some Appellants who did not bring a claim under the ATCA argue that they should be permitted to amend their complaints to do so. In light of our holding, such an amendment would be futile.

Some Appellants contend, however, that their claims under both state law and the ATCA are equitably tolled and could therefore survive our invalidation of section 354.6. Although the district court found that they did not allege facts sufficient to trigger equitable tolling, these Appellants contend that they were not required to allege such facts, because a statute of limitations is an affirmative defense, which a plaintiff is not required to anticipate in the

complaint. They also contend that even if they were required to allege such facts, the district court should have granted them leave to amend in order to give them the opportunity to do so. The curious aspect of this argument is that all of the Appellants who make this argument *did* plead equitable tolling in their complaints. Furthermore, they alleged *facts* that they believed would trigger such tolling. They alleged, for example, that the defendants had kept the plaintiffs ignorant of essential facts in the defendants' possession. The district court considered these alleged facts and found them insufficient to trigger tolling. *Forced Labor (Koreans), 164 F. Supp. 2d at 1181-82.* Although the court's discussion of equitable tolling concerned only the ATCA, its reasoning applies equally to the state law claims. On appeal, these Appellants offer neither a satisfactory answer to the district court's finding regarding equitable tolling nor any hint of any additional facts that they might allege in an amended complaint. Under these circumstances, amendment would be futile. We therefore find no abuse of discretion in the district court's dismissal of the complaints with prejudice. n20

n20 Deutsch argues for the first time on appeal that he should be permitted to amend his complaint to include a claim under the TVPA. He offers no explanation, however, for why he failed to bring that claim in his first amended complaint. Moreover, as noted above, the TVPA has an explicit statute of limitation of 10 years. Deutsch argues that that period commenced on the effective date of the Act, rather than on the date on which the injury was complete. He cites no authority for this proposition, and we do not find it to be a reasonable or plausible one. As Deutsch notes, we have held that the TVPA is applicable to acts that took place prior to the effective date of the Act. *Alvarez-Machain v. United States, 107 F.3d 696, 702-03 (9th Cir. 1996).* In *Alvarez-Machain*, however, the

plaintiff filed his claim only three years after the date of the alleged injury. *Id. at 700.* Nothing in our cases or the statute suggests that Congress intended the TVPA to open the federal courts to claims that were already more than 40 years old when the statute became effective or that no time limit exists under the TVPA as to the resurrection of claims for damages that may have occurred in the far distant past. Because the TVPA has a 10-year statute of limitations, permitting Deutsch to amend his complaint would be futile. We therefore affirm the dismissal with prejudice.

IV. Jurisdiction

In many of the cases before us, there is indisputable federal jurisdiction. In some, for example in *Deutsch* and in *Dunn v. Nippon Steel Corp.,* n21 there is diversity jurisdiction. *28 U.S.C. § 1332.* Appellants in several other cases, for example in *Terrence v. Mitsui & Co., Wheeler v. Mitsui & Co.,* and *Kim v. Ishikawajima Harima Heavy Indus. Co.*, assert claims under international law, thus giving rise to federal subject matter jurisdiction under *28 U.S.C. § 1331.*

n21 In *Dunn*, the amount in controversy is not stated in the complaint, nor was the amount determined by the district court. However, the Appellant seeks compensation and punitive damages for roughly three years of withheld wages, as well as for severe physical and mental injuries he suffered at the hands of the defendants and their predecessors during that time. There is thus no doubt that this case meets the $ 75,000 minimum amount in controversy required for diversity jurisdiction under *28 U.S.C. § 1332.*

Among the many cases that have been consolidated, there are some individual cases as to which federal jurisdiction may be uncertain. Appellants in those cases originally sought relief in state court, under state law, n22 against non-diverse defendants. After removal and consolidation, some of the Appellants sought remand to state court. The district court denied their motions, *Forced Labor (Allied I), 114 F. Supp. 2d at 943,* on the ground that "the complaints ..., on their face, implicate the federal common law of foreign relations." *Id.* Appellees opposed remand on other grounds as well. Appellants in some of these cases -- not precisely the same group that moved for remand below -- now argue that federal jurisdiction is lacking.

> n22 Although some plaintiffs amended or sought to amend their complaints, after removal, to include federal claims, such amendments do not bear on the evaluation of removal jurisdiction. *Abada v. Charles Schwab & Co., 300 F.3d 1112, 1117 (9th Cir. 2002).*

Normally, of course, we would address all jurisdictional issues as an initial matter, as they would determine whether we could proceed to the merits. The situation is different with respect to the cases consolidated here, because the cases over which jurisdiction is disputed raise no merits issues that are not also raised by one or more cases over which jurisdiction is certain and which have been consolidated with the disputed cases. In short, we are compelled to address all of the merits issues in these consolidated cases, regardless of whether there is jurisdiction over each of them. Furthermore, the ultimate survival of all of these cases depends on the validity of the provisions of section 354.6. In light of our holding that section 354.6 is unconstitutional, remand to state court of the cases of uncertain federal jurisdiction would be futile, as the state court would simply dismiss the

claims with prejudice. *See Bates v. Jones, 127 F.3d 870, 873 (9th Cir. 1997)* (noting that the California Supreme Court "has yet to disregard a directly applicable decision of this court on a question of federal law"). Therefore, our determination of the uncertain jurisdictional issues could have no effect on the outcome of any of the cases.

For these reasons, we decline to address the uncertain jurisdictional issues and simply affirm the district court's dismissal of all the cases before us.

Conclusion

For the foregoing reasons, we hold that [HN16] California Code of Civil Procedure section 354.6 is an unconstitutional intrusion on the foreign affairs power of the United States and that Appellants' remaining claims are barred by the applicable statutes of limitations. The judgments of the district courts are

AFFIRMED.

IN RE: WORLD WAR II ERA JAPANESE FORCED LABOR LITIGATION, This Document Relates To: Alfano v Mitsubishi Corp, CD Cal No 00-3174; Corre v Mitsui & Co, CD Cal No 00-999; Eneriz v Mitsui & Co, CD Cal No 00-1455; Heimbuch, et al. v Ishihara Sangyo Kaisha, Ltd, ND Cal No 00-0064; Hutchison v Mitsubishi Materials Corp, CD Cal No 00-2796; King v Nippon Steel Corp, ND Cal No 99-5042; Levenberg v Nippon Sharyo, Ltd, ND Cal No 99-1554; Levenberg v Nippon Sharyo, Ltd, ND Cal No 99-4737; Poole v Nippon Steel Corp, CD Cal No 00-0189; Price v Mitsubishi Corp., CD Cal No 00-5484; Solis v Nippon Steel Corp., CD Cal No 00-0188; Titherington v Japan Energy Corp, CD Cal No 00-4383; Wheeler v Mitsui & Co, Ltd, CD Cal No 00-2057

Master File No MDL-1347, CD Cal No 00-3174, CD Cal No 00-999, CD Cal No 00-1455, ND Cal No 00-0064, CD Cal No 00-2796, ND Cal No 99-5042, ND Cal No 99-1554, ND Cal No 99-4737, CD Cal No 00-0189, CD Cal No 00-5484, CD Cal No 00-0188, CD Cal No 00-4383, CD Cal No 00-2057

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

114 F. Supp. 2d 939; 2000 U.S. Dist. LEXIS 13984

September 21, 2000, Filed

DISPOSITION: Motions to dismiss and/or for judgment on the pleadings GRANTED.

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JUDGES: VAUGHN R WALKER, United States District Judge.

OPINIONBY: VAUGHN R WALKER

OPINION: ORDER NO 4

On December 23, 1941, after mounting a brave resistance against an overwhelming foe, the small American garrison on Wake Island in the South Pacific surrendered to Imperial Japanese forces. James King, a former United States Marine, was among the troops and civilians taken prisoner by the invaders. He was ultimately shipped to Kyushu, Japan, where he spent the remainder of the war toiling by day as a slave laborer in a steel factory and enduring maltreatment in a prison camp by night. When captured, King was 20 years old, 5 feet 11 inches tall and weighed 167 pounds. At the conclusion of the war, he weighed 98 pounds.

James King is one of the plaintiffs in these actions against Japanese corporations for forced labor in World War II; his experience, and the undisputed injustice he suffered, are representative. King and the other plaintiffs seek judicial redress for this injustice.

I

These actions are before the court for consolidated pretrial proceedings pursuant to June 5, 2000, and June 15, 2000, orders of transfer by the Judicial Panel on Multidistrict Litigation. On August 17, 2000, the court heard oral argument on plaintiffs' motions for remand to state court and defendants' motions to dismiss or for judgment on the pleadings.

This order addresses, first, all pending motions for remand. For the reasons stated below, the court concludes that notwithstanding plaintiffs' attempts to plead only state law claims, removal jurisdiction exists because these actions

raise substantial questions of federal law by implicating the federal common law of foreign relations.

Second, the court addresses the preclusive effect of the 1951 Treaty of Peace with Japan on a subset of the actions before the court, namely, those brought by plaintiffs who were United States or allied soldiers in World War II captured by Japanese forces and held as prisoners of war. The court concludes that the 1951 treaty constitutes a waiver of such claims.

This order does not address the pending motions to dismiss in cases brought by plaintiffs who were not members of the armed forces of the United States or its allies. Since these plaintiffs are not citizens of countries that are signatories of the 1951 treaty, their claims raise a host of issues not presented by the Allied POW cases and, therefore, require further consideration in further proceedings.

II

[HN1]Defendants may remove to federal court "any civil action brought in a State court of which the district courts of the United States have original jurisdiction." 28 USC § 1441(a). "The propriety of removal thus depends on whether the case originally could have been filed in federal court." Chicago v International College of Surgeons, 522 U.S. 156, 163, 139 L. Ed. 2d 525, 118 S. Ct. 523 (1997).

[HN2]Federal courts have original jurisdiction over cases "arising under the Constitution, laws or treaties of the United States." 28 USC § 1331. [HN3]For purposes of removal, federal question jurisdiction exists "only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." Caterpillar Inc v Williams, 482 U.S. 386, 392, 96 L. Ed. 2d 318, 107 S. Ct. 2425 (1987). Since a defense is not part of a plaintiff's properly pleaded statement of his claim, a case may not be removed to federal court on the basis of a federal defense. Rivet v Regions Bank of La, 522 U.S. 470, 475, 139 L. Ed. 2d 912, 118 S. Ct. 921 (1998).

Defendants' assertion of the Treaty of Peace with Japan as a defense to plaintiffs' state law causes of action does not, therefore, confer federal jurisdiction. Recognizing this, defendants rely on a line of cases committing to federal

common law questions implicating the foreign relations of the United States.

In Banco Nacional de Cuba v Sabbatino, 376 U.S. 398, 425, 11 L. Ed. 2d 804, 84 S. Ct. 923 (1964), a case in which federal jurisdiction was based on diversity of citizenship, [HN4]the Supreme Court held that development and application of the act of state doctrine was a matter of federal common law, notwithstanding the general rule of Erie R Co v Tompkins, 304 U.S. 64, 78, 82 L. Ed. 1188, 58 S. Ct. 817 (1938), that federal courts apply state substantive law in diversity cases. The court reasoned that because the doctrine concerned matters of comity between nations, "the problems involved are uniquely federal in nature." 376 U.S. at 424. lthough the applicable state law mirrored federal decisions, the Court was "constrained to make it clear that an issue [involving] our relationships with other members of the international community must be treated exclusively as an aspect of federal law." Id at 425.

Under Banco Nacional, [HN5]federal common law governs matters concerning the foreign relations of the United States. See Texas Indus, Inc v Radcliff Materials, Inc, 451 U.S. 630, 641, 68 L. Ed. 2d 500, 101 S. Ct. 2061 (1981). "In these instances, our federal system does not permit the controversy to be resolved under state law, either because the authority and duties of the United States as sovereign are intimately involved or because the * * * international nature of the controversy makes it inappropriate for state law to control." Id.

[HN6]If an examination of the complaint shows that the plaintiff's claims necessarily require determinations that will directly and significantly affect United States foreign relations, a plaintiff's state law claims should be removed. Republic of Philippines v Marcos, 806 F.2d 344, 352 (2d Cir 1986). This doctrine has been extended to disputes between private parties that implicate the "vital economic and sovereign interests" of the nation where the parties' dispute arose. Torres v Southern Peru Copper Corp, 113 F.3d 540, 543 n8 (5th Cir 1997).

The court concludes that the complaints in the instant cases, on their face, implicate the federal common law of foreign relations and, as such, give rise to federal jurisdiction.

Plaintiffs' claims arise out of world war and are enmeshed with the momentous policy choices that arose in the war's aftermath. The cases implicate the uniquely federal interests of the United States to make peace and enter treaties with foreign nations. As the United States has argued as amicus curiae, these cases carry potential to unsettle half a century of diplomacy.

After a thorough analysis, Judge Baird in the Central District of California denied remand in one of the cases now before the undersigned pursuant to the multidistrict litigation transfer order. Poole v Nippon Steel Corp, No 00-0189 (CD Cal March 17, 2000). The court agrees with the analysis and the conclusion in that case.[1] Judge Baird held: "This case, on its face, presents substantial issues of federal common law dealing with foreign policy and relations. * * * As such, plaintiffs may not evade this Court's jurisdiction by cloaking their complaints in terms of state law." The motions for remand are DENIED.

III

In addressing the motions to dismiss, the court refers again to a complaint that is representative of the actions by United States and Allied POWs, King v Nippon Steel Corp., No 99-5042.

As noted at the outset of this order, plaintiff King seeks redress for wrongs inflicted by his captors half a century ago. In count one of the complaint, he asserts a claim under [HN7]California Code of Civil Procedure § 354.6, a new law that permits an action by a "prisoner-of-war of the Nazi regime, its allies or sympathizers" to "recover compensation for labor performed as a Second World War slave labor victim * * * from any entity or successor in interest thereof, for whom that labor was performed * * * ." Cal Code Civ

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[1] In another related case in which remand was granted, Jeong Onoda Cement Co, Ltd, 2000 U.S. Dist. LEXIS 7985 (CD Cal May 18, 2000) the court did not consider the federal common law of foreign relation as a basis for federal jurisdiction.

Pro § 354.6. Count two is an unjust enrichment claim in which plaintiff seeks disgorgement and restitution of economic benefits derived from his labor. In count three, plaintiff seeks damages in tort for battery, intentional infliction of emotional distress and unlawful imprisonment. Count four alleges that defendant's failure to reveal its prior exploitation of prisoner labor to present-day customers in California and elsewhere constitutes an unfair business practice under California Business and Professions Code § 17204.

Defendants move pursuant to Federal Rule of Civil Procedure 12(c) for a judgment on the pleadings, arguing: (1) plaintiff's claims are barred by the Treaty of Peace with Japan; (2) plaintiff's claims raise nonjusticiable political questions; (3) the peace treaty, the War Claims Act of 1948 and the federal government's plenary authority over foreign affairs combine to preempt plaintiff's claims and (4) because the complaint alleges injuries caused by the Japanese government, plaintiff's claims are barred by the act of state doctrine and the Foreign Sovereign Immunities Act.

These arguments, and King's countervailing positions, arise in all of the cases before the court brought on behalf of Allied POWs against Japanese corporations. The court need not address all of them. For the reasons stated below, the court concludes that plaintiffs' claims are barred by the Treaty of Peace with Japan.

A

[HN8]A motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) is the proper means to challenge the sufficiency of the complaint after an answer has been filed. Depending on the procedural posture of the individual case, some defendants have filed motions pursuant to FRCP 12(c) and others have filed motions to dismiss pursuant to FRCP 12(b). The distinction in the present context is not important. [HN9]In the Ninth Circuit, the standard by which the district court must determine Rule 12(c) motions is the same as the standard for the more familiar motion to dismiss under Rule 12(b)(6): "A district court will render a judgment on the pleadings when the moving party clearly establishes on the face of the pleadings [and by evidence of which the court takes judicial notice]

that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law." Enron Oil Trading & Transp Co v Walbrook Ins Co, 132 F.3d 526, 529 (9th Cir 1997) (citations omitted).

B

[HN10]The Treaty of Peace with Japan was signed at San Francisco on September 8, 1951, by the representatives of the United States and 47 other Allied powers and Japan. Treaty of Peace with Japan, [1952] 3 UST 3169, TIAS No 2490 (1951). President Truman, with the advice and consent of the Senate, ratified the treaty and it became effective April 28, 1952. Id.

Article 14 provides the terms of Japanese payment "for the damage and suffering caused by it during the war." Id at Art 14(a). For present purposes, the salient features of the agreement are: (1) a grant of authority of Allied powers to seize Japanese property within their jurisdiction at the time of the treaty's effective date; (2) an obligation of Japan to assist in the rebuilding of territory occupied by Japanese forces during the war and (3) waiver of all "other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war * * * ." Id at Art 14(a)-(b) (emphasis added).

It is the waiver provision that defendants argue bars plaintiffs' present claims. In its entirety, the provision reads:

> ([HN11]b) Except as otherwise provided in the present Treaty, the Allied Powers waive all reparations claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war, and claims if the Allied Powers for direct military costs of occupation.

Id at Art 14(b).

[HN12]On its face, the treaty waives "all" reparations and "other claims" of the "nationals" of Allied powers "arising out of any actions taken by Japan and its nationals during the

course of the prosecution of the war." The language of this waiver is strikingly broad, and contains no conditional language or limitations, save for the opening clause referring to the provisions of the treaty. [HN13]The interests of Allied prisoners of war are addressed in Article 16, which provides for transfer of Japanese assets in neutral or enemy jurisdictions to the International Committee of the Red Cross for distribution to former prisoners and their families. Id at Art 16. The treaty specifically exempts from reparations, furthermore, those Japanese assets resulting from "the resumption of trade and financial relations subsequent to September 2, 1945." Id at Art 14(a)(2)(II)(iv).

To avoid the preclusive effect of the treaty, plaintiffs advance an interpretation of Article 14(b) that is strained and, ultimately, unconvincing. Although the argument has several shades, it comes down to this: the signatories of the treaty did not understand the Allied waiver to apply to prisoner of war claims because the provision did not expressly identify such claims, in contrast to the corresponding Japanese waiver provision of Article 19. Article 19(b) states that the Japanese waiver includes "any claims and debts arising in respect to Japanese prisoners of war and civilian internees in the hands of the Allied Powers * * * ."

That the treaty is more specific in Article 19 does not change the plain meaning of the language of Article 14. If the language of Article 14 were ambiguous, plaintiffs' expressio unius argument would have more force. But plaintiffs cannot identify any ambiguity in the language of Article 14. To do so would be to inject hidden meaning into straightforward text.

[HN14]The treaty by its terms adopts a comprehensive and exclusive settlement plan for war-related economic injuries which, in its wholesale waiver of prospective claims, is not unique. See, for example, Neri v United States, 204 F.2d 867 (2d Cir 1953) (claim barred by broad waiver provision in Treaty of Peace with Italy). The waiver provision of Article 14(b) is plainly broad enough to encompass the plaintiffs' claims in the present litigation.

C

[HN15]The court does not find the treaty language ambiguous, and therefore its analysis need go no further. Chan v Korean Airlines, 490 U.S. 122, 134, 104 L. Ed. 2d 113, 109 S. Ct. 1676 (1989) (if text of treaty is clear, courts "have no power to insert an amendment."). To the extent that Articles 19(b) raises any uncertainty, however, the court "may look beyond the written words to the history of the treaty, the negotiations, and the practical construction adopted by the parties." Air France v Saks, 470 U.S. 392, 396, 84 L. Ed. 2d 289, 105 S. Ct. 1338 (1985). These authorities are voluminous and therefore of doubtful utility due to the potential for misleading selective citation. Counsel for both sides have proved themselves skilled in scouring these documents for support of their positions, and that both sides have succeeded to a certain degree underscores the questionable value of such resort to drafting history. Nevertheless, the court has conducted its own review of the historical materials, and concludes that they reinforce the conclusion that the Treaty of Peace with Japan was intended to bar claims such as those advanced by plaintiffs in this litigation.

The official record of treaty negotiations establishes that a fundamental goal of the agreement was to settle the reparations issue once and for all. As the statement of the chief United States negotiator, John Foster Dulles, makes clear, it was well understood that leaving open the possibility of future claims would be an unacceptable impediment to a lasting peace:

> Reparation is usually the most controversial aspect of peacemaking. The present peace is no exception.
>
> On the one hand, there are claims both vast and just. Japan's aggression caused tremendous cost, losses and suffering. * * *
>
> On the other hand, to meet these claims, there stands a Japan presently reduced to four home islands which are unable to produce the food its people need to live, or the raw materials they need to work. * * *

> Under these circumstances, if the treaty validated, or kept contingently alive, monetary reparations claims against Japan, her ordinary commercial credit would vanish, the incentive of her people would be destroyed and they would sink into a misery of body and spirit that would make them easy prey to exploitation. * * *
>
> There would be bitter competition [among the Allies] for the largest possible percentage of an illusory pot of gold.

See US Dept of State, Record of Proceedings of the Conference for the Conclusion and Signature of the Treaty of Peace with Japan 82-83 (1951) (Def Req for Judicial Notice, Exh I).

The policy of the United States that Japanese liability for reparations should be sharply limited was informed by the experience of six years of United States-led occupation of Japan. During the occupation the Supreme Commander of the Allied Powers (SCAP) for the region, General Douglas MacArthur, confiscated Japanese assets in conjunction with the task of managing the economic affairs of the vanquished nation and with a view to reparations payments. See SCAP, Reparations: Development of Policy and Directives (1947). It soon became clear that Japan's financial condition would render any aggressive reparations plan an exercise in futility. Meanwhile, the importance of a stable, democratic Japan as a bulwark to communism in the region increased. At the end of 1948, MacArthur expressed the view that "the use of reparations as a weapon to retard the reconstruction of a viable economy in Japan should be combated with all possible means" and "recommended that the reparations issue be settled finally and without delay." Memorandum from General Headquarters of SCAP to Department of the Army (Dec. 14, 1948) at P 8 (Def Req for Judicial Notice, Exh E).

That this policy was embodied in the treaty is clear not only from the negotiations history but also from the Senate Foreign Relations Committee report recommending approval of the treaty by the Senate. The committee noted, for example:

> Obviously insistence upon the payment of reparations in any proportion commensurate with the claims of the injured countries and their nationals would wreck Japan's economy, dissipate any credit that it may possess at present, destroy the initiative of its people, and create misery and chaos in which the seeds of discontent and communism would flourish. In short, [it] would be contrary to the basic purposes and policy of * * * the United States * * * .

Japanese Peace Treaty and Other Treaties Relating to Security in the Pacific, S Rep No 82-2, 82d Cong, 2d Sess 12 (1952) (Def Req for Judicial Notice, Exh F). The committee recognized that the treaty provisions "do not give a direct right of return to individual claimants except in the case of those having property in Japan," id at 13, and endorsed the position of the State Department that "United States nationals, whose claims are not covered by the treaty provisions * * * must look for relief to the Congress of the United States," id at 14.

Indeed, the treaty went into effect against the backdrop of congressional response to the need for compensation for former prisoners of war, in which many, if not all, of the plaintiffs in the present cases participated. See War Claims Act of 1948, 50 USC §§ 2001-2017p (establishing War Claims Commission and assigning top priority to claims of former prisoners of war).

Were the text of the treaty to leave any doubt that it waived claims such as those advanced by plaintiffs in these cases, the history of the Allied experience in post-war Japan, the drafting history of the treaty and the ratification debate would resolve it in favor of a finding of waiver.

D

As one might expect, considering the acknowledged inadequacy of compensation for victims of the Japanese regime provided under the treaty, the issue of additional reparations has arisen repeatedly since the adoption of that agreement some 50 years ago. This is all the more

understandable in light of the vigor with which the Japanese economy has rebounded from the abyss.

The court finds it significant, as further support for the conclusion that the treaty bars plaintiffs' claims, that the United States, through State Department officials, has stood firmly by the principle of finality embodied in the treaty. This position was expressed in recent congressional testimony by Ronald J Bettauer, deputy legal advisor, as follows:

> The 1951 Treaty of Peace with Japan settles all war-related claims of the U.S. and its nationals, and precludes the possibility of taking legal action in United States domestic courts to obtain additional compensation for war victims from Japan or its nationals--including Japanese commercial enterprises.

POW Survivors of the Bataan Death March, Hearing before the Senate Committee on the Judiciary (June 28, 2000) (statement of Ronald J Bettauer, United States Department of State) (Def Req for Judicial Notice, Exh P).

In another recent example, in response to a letter from Senator Orrin Hatch expressing "disappointment" with the "fifty-five year old injustice imposed on our military forces held as prisoners of war in Japan" and urging the Secretary of State to take action, a State Department representative wrote:

> The Treaty of Peace with Japan has, over the past five decades, served to sustain U.S. security interests in Asia and to support peace and stability in the region. We strongly believe that the U.S. must honor its international agreements, including the [treaty]. There is, in our view, no justification for the U.S. to attempt to reopen the question of international commitments and obligations under the 1951 Treaty in order now to seek a more favorable settlement of the issue of Japanese compensation.

> This explanation obviously offers no consolation to the victims of Japanese wartime aggression. Regrettably, however, it was impossible when the Treaty was negotiated--and it remains impossible today, 50 years later--to compensate fully for the suffering visited upon the victims of the war * * * .

Letter of Jan 18, 2000, from US Dept of State to The Hon Orrin Hatch at 2.

[HN16]The conclusion that the 1951 treaty constitutes a waiver of the instant claims, as stated above and argued in the brief of the United States as amicus curiae in this case, carries significant weight. See Kolovrat v Oregon, 366 U.S. 187, 194, 6 L. Ed. 2d 218, 81 S. Ct. 922 (1961) ("While courts interpret treaties for themselves, the meaning given them by the departments of government particularly charged with their negotiation and enforcement is given great weight."); Sullivan v Kidd, 254 U.S. 433, 442, 41 S. Ct. 158, 65 L. Ed. 344 (1921) ("The construction placed upon the treaty before us and consistently adhered to by the Executive Department of the Government, charged with the supervision of our foreign relations, should be given much weight."). The government's position also comports entirely with the court's own analysis of the treaty and its history.

Plaintiffs raise several additional arguments that bear only brief mention. First is the characterization of these claims as not arising out of the "prosecution of the war," as that phrase is used in the treaty. Plaintiffs attempt to cast their claims as involving controversies between private parties.

It is particularly far-fetched to attempt to distinguish between the conduct of Imperial Japan during the Second World War and the major industry that was the engine of its war machine. The lack of any sustainable distinction is apparent from the complaints in these cases. For example, the King complaint alleges that a class of war prisoners were forced to work "in support of the Japanese war effort," Compl P 56, and pursuant to a directive from the Japanese government that the "'labor and technical skill'" of prisoners of war "'be fully utilized for the replenishment of production, and contribution rendered toward the prosecution of the Greater East Asiatic War,'" id at P 30. Furthermore, the complaint

asserts that plaintiff worked in a factory "where motor armatures were manufactured for the war effort." Id at P 35. These allegations quite clearly bring this action within the scope of the treaty's waiver of all claims "arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war." Treaty at Art 14(b).

Plaintiffs also argue that waiver of plaintiffs' claims renders the treaty unconstitutional and invalid under international law. This position is contrary to the well-settled principle that the government may lawfully exercise its "sovereign authority to settle the claims of its nationals against foreign countries." Dames & Moore v Regan, 453 U.S. 654, 679-80, 69 L. Ed. 2d 918, 101 S. Ct. 2972 (1981); see also Neri, 204 F.2d at 868-69 (enforcing treaty waiver of reparations claims).

Finally, plaintiffs assert that subsequent settlements between Japan and other treaty signatories on more favorable terms than those set forth in the treaty should "revive" plaintiff's claims under Article 26, which provides in relevant part:

> [HN17]
> Should Japan make a * * * war claims settlement with any State granting that State greater advantages than those provided by the present Treaty, those same advantages shall be extended to the parties to the present Treaty.

Treaty at Art 26. [HN18]Without deciding whether the evidence plaintiff cites of other agreements implicates Article 26, the court finds that that provision confers rights only upon the "parties to the present treaty," i.e., the government signatories. The question of enforcing Article 26 is thus for the United States, not the plaintiffs, to decide.

IV

The Treaty of Peace with Japan, insofar as it barred future claims such as those asserted by plaintiffs in these actions, exchanged full compensation of plaintiffs for a future peace. History has vindicated the wisdom of that bargain. And while full compensation for plaintiffs' hardships, in the purely economic sense, has been denied these former prisoners and countless other survivors of the war, the immeasurable bounty of life for themselves and their

posterity in a free society and in a more peaceful world services the debt.

The motions to dismiss and/or for judgment on the pleadings are GRANTED. The clerk shall enter judgment in favor of defendants in the above-captioned cases.

IT IS SO ORDERED.

VAUGHN R WALKER

United States District Judge

MULTILATERAL

TREATY OF PEACE WITH JAPAN

TIAS 2490

3 U.S.T. 3169; 1951 U.S.T. LEXIS 516

September 8, 1951, Date-Signed

April 28, 1952, Date-In-Force

STATUS:
Signed at San Francisco September 8, 1951; ratification advised by the Senate of the United States of America March 20, 1952, with a declaration; ratified by the President of the United States of America April 15, 1952, subject to declaration; ratification of the United States of America deposited at Washington April 28, 1952; proclaimed by the President of the United States of America April 28, 1952; entered into force April 28, 1952. With declarations by Japan signed at San Francisco September 8, 1951. And exchange of notes signed at San Francisco September 8, 1951.

TREATY OF PEACE WITH JAPAN

TEXT:
BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS the Treaty of Peace with Japan was signed at San Francisco on September 8, 1951 by the respective

Plenipotentiaries of the United States of America and 47 other Allied Powers, and Japan;

WHEREAS the text of the said Treaty, in the English, French, Spanish, and Japanese languages, is word for word as follows:

Whereas the Allied Powers and Japan are resolved that henceforth their relations shall be those of nations which, as sovereign equals, cooperate in friendly association to promote their common welfare and to maintain international peace and security, and are therefore desirous of concluding a Treaty of Peace which will settle questions still outstanding as a result of the existence of a state of war between them;

Whereas Japan for its part declares its intention to apply for membership in the United Nations and in all circumstances to conform to the principles of the Charter of the United Nations; to strive to realize the objectives of the Universal Declaration of Human Rights;[1] to seek to create within Japan conditions of stability and well-being as defined in Articles 55 and 56 of the Charter of the United Nations and already initiated by post-surrender Japanese legislation; and in public and private trade and commerce to conform to internationally accepted fair practices;

Whereas the Allied Powers welcome the intentions of Japan set out in the foregoing paragraph;

The Allied Powers and Japan have therefore determined to conclude the present Treaty of Peace, and have accordingly appointed the undersigned Plenipotentiaries, who, after presentation of their full powers, found in good and due form, have agreed on the following provisions:

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[1] Senate doc. 123, 81st Cong., 1st sess., p. 1156.

CHAPTER I

PEACE

Article 1

(a) The state of war between Japan and each of the Allied Powers is terminated as from the date on which the present Treaty comes into force between Japan and the Allied Power concerned as provided for in Article 23.

(b) The Allied Powers recognize the full sovereignty of the Japanese people over Japan and its territorial waters.

CHAPTER II

TERRITORY

Article 2

(a) Japan, recognizing the independence of Korea, renounces all right, title and claim to Korea, including the islands of Quelpart, Port Hamilton and Dagelet.

(b) Japan renounces all right, title and claim to Formosa and the Pescadores.

(c) Japan renounces all right, title and claim to the Kurile Islands, and to that portion of Sakhalin and the islands adjacent to it over which Japan acquired sovereignty as a consequence of the Treaty of Portsmouth of September 5, 1905.

(d) Japan renounces all right, title and claim in connection with the League of Nations Mandate System, and accepts the action of the United Nations Security Council of April 2, 1947, extending the trusteeship system to the Pacific Islands formerly under mandate to Japan.

(e) Japan renounces all claim to any right or title to or interest in connection with any part of the Antarctic area, whether deriving from the activities of Japanese nationals or otherwise.

(f) Japan renounces all right, title and claim to the Spratly Islands and to the Paracel Islands.

Article 3

Japan will concur in any proposal of the United States to the United Nations to place under its trusteeship system, with the United States as the sole administering authority, Nansei Shoto south of 29 [degrees] north latitude (including the Ryukyu Islands and the Daito Islands), Nanpo Shoto south of Sofu Gan (including the Bonin Islands, Rosario Island-and the Volcano Islands) and Parece Vela and Marcus Island. Pending the making of such a proposal and affirmative action thereon, the United States will have the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters.

Article 4

(a) Subject to the provisions of paragraph (b) of this Article, the disposition of property of Japan and of its nationals in the areas referred to in Article 2, and their claims, including debts, against the authorities presently administering such areas and the residents (including jurisdical persons) thereof, and the disposition in Japan of property of such authorities and residents, and of claims, including debts, of such authorities and residents against Japan and its nationals, shall be the subject of special arrangements between Japan and such authorities. The property of any of the Allied Powers or its nationals in the areas referred to in Article 2 shall, insofar as this has not already been done, be returned by the administering authority in the condition in which it now exists. (The term nationals whenever used in the present Treaty includes juridical persons.)

(b) Japan recognizes the validity of dispositions of property of Japan and Japanese nationals made by or pursuant to directives of the United States Military

Government in any of the areas referred to in Articles 2 and 3.

(c) Japanese owned submarine cables connecting Japan with territory removed from Japanese control pursuant to the present Treaty shall be equally divided, Japan retaining the Japanese terminal and adjoining half of the cable, and the detached territory the remainder of the cable and connecting terminal facilities.

CHAPTER III

SECURITY

Article 5

(a) Japan accepts the obligations set forth in Article 2 of the Charter of the United Nations, and in particular the obligations

(i) to settle its international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered;

(ii) to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the Purposes of the United Nations;

(iii) to give the United Nations every assistance in any action it takes in accordance with the Charter and to refrain from giving assistance to any State against which the United Nations may take preventive or enforcement action.

(b) The Allied Powers confirm that they will be guided by the principles of Article 2 of the Charter of the United Nations in their relations with Japan.

(c) The Allied Powers for their part recognize that Japan as a sovereign nation possesses the inherent right of individual or collective self-defense referred to in Article 51 of the Charter of the United Nations and that Japan may voluntarily enter into collective security arrangements.

Article 6

(a) All occupation forces of the Allied Powers shall be withdrawn from Japan as soon as possible after the coming into force of the present Treaty, and in any case not later than 90 days thereafter. Nothing in this provision shall, however, prevent the stationing or retention of foreign armed forces in Japanese territory under or in consequence of any bilateral or multilateral agreements which have been or may be made between one or more of the Allied Powers, on the one hand, and Japan on the other.

(b) The provisions of Article 9 of the Potsdam Proclamation of July 26, 1945,[1] dealing with the return of Japanese military forces to their homes, to the extent not already completed, will be carried out.

(c) All Japanese property for which compensation has not already been paid, which was supplied for the use of the occupation forces and which remains in the possession of those forces at the time of the coming into force of the present Treaty, shall be returned to the Japanese Government within the same 90 days unless other arrangements are made by mutual agreement.

CHAPTER IV

POLITICAL AND ECONOMIC CLAUSES

Article 7

(a) Each of the Allied Powers, within one year after the present Treaty has come into force between it and Japan, will notify Japan which of its prewar bilateral treaties or conventions with Japan it wishes to continue in force or revive, and any treaties or conventions so notified shall continue in force or be revived subject only to such

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[1] Senate doc. 123, 81st Cong., 1st sess., p. 49.

amendments as may be necessary to ensure conformity with the present Treaty. The treaties and conventions so notified shall be considered as having been continued in force or revived three months after the date of notification and shall be registered with the Secretariat of the United Nations. All such treaties and conventions as to which Japan is not so notified shall be regarded as abrogated.

(b) Any notification made under paragraph (a) of this Article may except from the operation or revival of a treaty or convention any territory for the international relations of which the notifying Power is responsible, until three months after the date on which notice is given to Japan that such exception shall cease to apply.

Article 8

(a) Japan will recognize the full force of all treaties now or hereafter concluded by the Allied Powers for terminating the state of war initiated on September 1, 1939, as well as any other arrangements by the Allied Powers for or in connection with the restoration of peace. Japan also accepts the arrangements made for terminating the former League of Nations and Permanent Court of International Justice.

(b) Japan renounces all such rights and interests as it may derive from being a signatory power of the Conventions of St. Germain-en-Laye of September 10, 1919, and the Straits Agreement of Montreux of July 20, 1936, and from Article 16 of the Treaty of Peace with Turkey signed at Lausanne on July 24, 1923.

(c) Japan renounces all rights, title and interests acquired under, and is discharged from all obligations resulting from, the Agreement between Germany and the Creditor Powers of January 20, 1930, and its Annexes, including the Trust Agreement, dated May 17, 1930; the Convention of January 20, 1930, respecting the Bank for International Settlements; and the Statutes of the Bank for International Settlements. Japan will notify to the Ministry of Foreign Affairs in Paris

within six months of the first coming into force of the present Treaty its renunciation of the rights, title and interests referred to in this paragraph.

Article 9

Japan will enter promptly into negotiations with the Allied Powers so desiring for the conclusion of bilateral and multilateral agreements providing for the regulation or limitation of fishing and the conservation and development of fisheries on the high seas.

Article 10

Japan renounces all special rights and interests in China, including all benefits and privileges resulting from the provisions of the final Protocol signed at Peking on September 7, 1901,[1] and all annexes, notes and documents supplementary thereto, and agrees to the abrogation in respect to Japan of the said protocol, annexes, notes and documents.

Article 11

Japan accepts the judgments of the International Military Tribunal for the Far East and of other Allied War Crimes Courts both within and outside Japan, and will carry out the sentences imposed thereby upon Japanese nationals imprisoned in Japan. The power to grant clemency, to reduce sentences and to parole with respect to such prisoners may not be exercised except on the decision of the Government or Governments which imposed the sentence in each instance, and on the recommendation of Japan. In the case of persons sentenced by the International Military Tribunal for the Far East, such power may not be exercised except on the decision of a majority of the Governments represented on the Tribunal, and on the recommendation of Japan.

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[1] Treaty Series 397.

Article 12

(a) Japan declares its readiness promptly to enter into negotiations for the conclusion with each of the Allied Powers of treaties or agreements to place their trading, maritime and other commercial relations on a stable and friendly basis.

(b) Pending the conclusion of the relevant treaty or agreement, Japan will, during a period of four years from the first coming into force of the present Treaty
(1) accord to each of the Allied Powers, its nationals, products and vessels
(i) most-favored-nation treatment with respect to customs duties, charges, restrictions and other regulations on or in connection with the importation and exportation of goods;
(ii) national treatment with respect to shipping, navigation and imported goods, and with respect to natural and juridical persons and their interests - such treatment to include all matters pertaining to the levying and collection of taxes, access to the courts, the making and performance of contracts, rights to property (tangible and intangible), participation in juridical entities constituted under Japanese law, and generally the conduct of all kinds of business and professional activities;
(2) ensure that external purchases and sales of Japanese state trading enterprises shall be based solely on commercial considerations.

(c) In respect to any matter, however, Japan shall be obliged to accord to an Allied Power national treatment, or most-favored-nation treatment, only to the extent that the Allied Power concerned accords Japan national treatment or most-favored-nation treatment, as the case may be, in respect of the same matter. The reciprocity envisaged in the foregoing sentence shall be determined, in the case of products, vessels and juridical entities of, and persons domiciled in, any non-metropolitan territory of an Allied Power, and in the case of juridical entities of, and persons

domiciled in, any state or province of an Allied Power having a federal government, by reference to the treatment accorded to Japan in such territory, state or province.

(d) In the application of this Article, a discriminatory measure shall not be considered to derogate from the grant of national or most-favored-nation treatment, as the case may be, if such measure is based on an exception customarily provided for in the commercial treaties of the party applying it, or on the need to safeguard that party's external financial position or balance of payments (except in respect to shipping and navigation), or on the need to maintain its essential security interests, and provided such measure is proportionate to the circumstances and not applied in an arbitrary or unreasonable manner.

(e) Japan's obligations under this Article shall not be affected by the exercise of any Allied rights under Article 14 of the present Treaty; nor shall the provisions of this Article be understood as limiting the undertakings assumed by Japan by virtue of Article 15 of the Treaty.

Article 13

(a) Japan will enter into negotiations with any of the Allied Powers, promptly upon the request of such Power or Powers, for the conclusion of bilateral or multilateral agreements relating to international civil air transport.

(b) Pending the conclusion of such agreement or agreements, Japan will, during a period of four years from the first coming into force of the present Treaty, extend to such Power treatment not less favorable with respect to air-traffic rights and privileges than those exercised by any such Powers at the date of such coming into force, and will accord complete equality of opportunity in respect to the operation and development of air services.

(c) Pending its becoming a party to the Convention on International Civil Aviation in accordance with Article 93

thereof, Japan will give effect to the provisions of that Convention applicable to the international navigation of aircraft, and will give effect to the standards, practices and procedures adopted as annexes to the Convention in accordance with the terms of the Convention.

CHAPTER V

CLAIMS AND PROPERTY

Article 14

(a) It is recognized that Japan should pay reparations to the Allied Powers for the damage and suffering caused by it during the war. Nevertheless it is also recognized that the resources of Japan are not presently sufficient, if it is to maintain a viable economy, to make complete reparation for all such damage and suffering and at the same time meet its other obligations.

Therefore,

1. Japan will promptly enter into negotiations with Allied Powers so desiring, whose present territories were occupied by Japanese forces and damaged by Japan, with a view to assisting to compensate those countries for the cost of repairing the damage done, by making available the services of the Japanese people in production, salvaging and other work for the Allied Powers in question. Such arrangements shall avoid the imposition of additional liabilities on other Allied Powers, and, where the manufacturing of raw materials is called for, they shall be supplied by the Allied Powers in question, so as not to throw any foreign exchange burden upon Japan.

2. (I) Subject to the provisions of sub-paragraph (II) below, each of the Allied Powers shall have the right to seize, retain, liquidate or otherwise dispose of all property, rights and interests of

(a) Japan and Japanese nationals,

(b) persons acting for or on behalf of Japan or Japanese nationals, and

(c) entities owned or controlled by Japan or Japanese nationals, which on the first coming into force of the present Treaty were subject to its jurisdiction. The property, rights and interests specified in this sub-paragraph shall include those now blocked, vested or in the possession or under the control of enemy property authorities of Allied Powers, which belonged to, or were held or managed on behalf of, any of the persons or entities mentioned in (a), (b) or (c) above at the time such assets came under the controls of such authorities.

(II) The following shall be excepted from the right specified in subparagraph (I) above:
(i) property of Japanese natural persons who during the war resided with the permission of the Government concerned in the territory of one of the Allied Powers, other than territory occupied by Japan, except property subjected to restrictions during the war and not released from such restrictions as of the date of the first coming into force of the present Treaty;
(ii) all real property, furniture and fixtures owned by the Government of Japan and used for diplomatic or consular purposes, and all personal furniture and furnishings and other private property not of an investment nature which was normally necessary for the carrying out of diplomatic and consular functions, owned by Japanese diplomatic and consular personnel;
(iii) property belonging to religious bodies or private charitable institutions and used exclusively for religious or charitable purposes;
(iv) property, rights and interests which have come within its jurisdiction in consequence of the resumption of trade and financial relations subsequent to September 2, 1945, between the country concerned and Japan, except such as have resulted from transactions contrary to the laws of the Allied Power concerned;

(v) obligations of Japan or Japanese nationals, any right, title or interest in tangible property located in Japan, interests in enterprises organized under the laws of Japan, or any paper evidence thereof; provided that this exception shall only apply to obligations of Japan and its nationals expressed in Japanese currency.

(III) Property referred to in exceptions (i) through (v) above shall be returned subject to reasonable expenses for its preservation and administration. If any such property has been liquidated the proceeds shall be returned instead.

(IV) The right to seize, retain, liquidate or otherwise dispose of property as provided in sub-paragraph (I) above shall be exercised in accordance with the laws of the Allied Power concerned, and the owner shall have only such rights as may be given him by those laws.

(V) The Allied Powers agree to deal with Japanese trademarks and literary and artistic property rights on a basis as favorable to Japan as circumstances ruling in each country will permit.

(b) Except as otherwise provided in the present Treaty, the Allied Powers waive all reparations claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war, and claims of the Allied Powers for direct military costs of occupation.

Article 15

(a) Upon application made within nine months of the coming into force of the present Treaty between Japan and the Allied Power concerned, Japan will, within six months of the date of such application, return the property, tangible and intangible, and all rights or interests of any kind in Japan of each Allied Power and its nationals which was within Japan at any time between December 7, 1941, and September 2, 1945, unless the owner has freely disposed thereof without

duress or fraud. Such property shall be returned free of all encumbrances and charges to which it may have become subject because of the war, and without any charges for its return. Property whose return is not applied for by or on behalf of the owner or by his Government within the prescribed period may be disposed of by the Japanese Government as it may determine. In cases where such property was within Japan on December 7, 1941, and cannot be returned or has suffered injury or damage as a result of the war, compensation will be made on terms not less favorable than the terms provided in the draft Allied Powers Property Compensation Law approved by the Japanese Cabinet on July 13, 1951.

(b) With respect to industrial property rights impaired during the war, Japan will continue to accord to the Allied Powers and their nationals benefits no less than those heretofore accorded by Cabinet Orders No. 309 effective September 1, 1949, No. 12 effective January 28, 1950, and No. 9 effective February 1, 1950, all as now amended, provided such nationals have applied for such benefits within the time limits prescribed therein.

(c)(i) Japan acknowledges that the literary and artistic property rights which existed in Japan on December 6, 1941, in respect to the published and unpublished works of the Allied Powers and their nationals have continued in force since that date, and recognizes those rights which have arisen, or but for the war would have arisen, in Japan since that date, by the operation of any conventions and agreements to which Japan was a party on that date, irrespective of whether or not such conventions or agreements were abrogated or suspended upon or since the outbreak of war by the domestic law of Japan or of the Allied Power concerned.

(ii) Without the need for application by the proprietor of the right and without the payment of any fee or compliance with any other formality, the period from December 7, 1941,

until the coming into force of the present Treaty between Japan and the Allied Power concerned shall be excluded from the running of the normal term of such rights; and such period, with an additional period of six months, shall be excluded from the time within which a literary work must be translated into Japanese in order to obtain translating rights in Japan.

Article 16

As an expression of its desire to indemnify those members of the armed forces of the Allied Powers who suffered undue hardships while prisoners of war of Japan, Japan will transfer its assets and those of its nationals in countries which were neutral during the war, or which were at war with any of the Allied Powers, or, at its option, the equivalent of such assets, to the International Committee of the Red Cross which shall liquidate such assets and distribute the resultant fund to appropriate national agencies, for the benefit of former prisoners of war and their families on such basis as it may determine to be equitable. The categories of assets described in Article 14 (a) 2(II) (ii) through (v) of the present Treaty shall be excepted from transfer, as well as assets of Japanese natural persons not residents of Japan on the first coming into force of the Treaty. It is equally understood that the transfer provision of this Article has no application to the 19,770 shares in the Bank for International Settlements presently owned by Japanese financial institutions.

Article 17

(a) Upon the request of any of the Allied Powers, the Japanese Government shall review and revise in conformity with international law any decision or order of the Japanese Prize Courts in cases involving ownership rights of nationals of that Allied Power and shall supply copies of all documents comprising the records of these cases, including the decisions taken and orders issued. In any case in which

such review or revision shows that restoration is due, the provisions of Article 15 shall apply to the property concerned.

(b) The Japanese Government shall take the necessary measures to enable nationals of any of the Allied Powers at any time within one year from the coming into force of the present Treaty between Japan and the Allied Power concerned to submit to the appropriate Japanese authorities for review any judgment given by a Japanese court between December 7, 1941, and such coming into force, in any proceedings in which any such national was unable to make adequate presentation of his case either as plaintiff or defendant. The Japanese Government shall provide that, where the national has suffered injury by reason of any such judgment, he shall be restored in the position in which he was before the judgment was given or shall be afforded such relief as may be just and equitable in the circumstances.

Article 18

(a) It is recognized that the intervention of the state of war has not affected the obligation to pay pecuniary debts arising out of obligations and contracts (including those in respect of bonds) which existed and rights which were acquired before the existence of a state of war, and which are due by the Government or nationals of Japan to the Government or nationals of one of the Allied Powers, or are due by the Government or nationals of one of the Allied Powers to the Government or nationals of Japan. The intervention of a state of war shall equally not be regarded as affecting the obligation to consider on their merits claims for loss or damage to property or for personal injury or death which arose before the existence of a state of war, and which may be presented or re-presented by the Government of one of the Allied Powers to the Government of Japan, or by the Government of Japan to any of the Governments of the Allied Powers. The provisions of this paragraph are without prejudice to the rights conferred by Article 14.

(b) Japan affirms its liability for the prewar external debt of the Japanese State and for debts of corporate bodies subsequently declared to be liabilities of the Japanese State, and expresses its intention to enter into negotiations at an early date with its creditors with respect to the resumption of payments on those debts; to encourage negotiations in respect to other prewar claims and obligations; and to facilitate the transfer of sums accordingly.

Article 19

(a) Japan waives all claims of Japan and its nationals against the Allied Powers and their nationals arising out of the war or out of actions taken because of the existence of a state of war, and waives all claims arising from the presence, operations or actions of forces or authorities of any of the Allied Powers in Japanese territory prior to the coming into force of the present Treaty.

(b) The foregoing waiver includes any claims arising out of actions taken by any of the Allied Powers with respect to Japanese ships between September 1, 1939, and the coming into force of the present Treaty, as well as any claims and debts arising in respect to Japanese prisoners of war and civilian internees in the hands of the Allied Powers, but does not include Japanese claims specifically recognized in the laws of any Allied Power enacted since September 2, 1945.

(c) Subject to reciprocal renunciation, the Japanese Government also renounces all claims (including debts) against Germany and German nationals on behalf of the Japanese Government and Japanese nationals, including intergovernmental claims and claims for loss or damage sustained during the war, but excepting (a) claims in respect of contracts entered into and rights acquired before September 1, 1939, and (b) claims arising out of trade and financial relations between Japan and Germany after September 2, 1945. Such renunciation shall not prejudice

actions taken in accordance with Articles 16 and 20 of the present Treaty.

(d) Japan recognizes the validity of all acts and omissions done during the period of occupation under or in consequence of directives of the occupation authorities or authorized by Japanese law at that time, and will take no action subjecting Allied nationals to civil or criminal liability arising out of such acts or omissions.

Article 20

Japan will take all necessary measures to ensure such disposition of German assets in Japan as has been or may be determined by those powers entitled under the Protocol of the proceedings of the Berlin Conference of 1945[1] to dispose of those assets, and pending the final disposition of such assets will be responsible for the conservation and administration thereof.

Article 21

Notwithstanding the provisions of Article 25 of the present Treaty, China shall be entitled to the benefits of Articles 10 and 14(a)2; and Korea to the benefits of Articles 2, 4, 9 and 12 of the present Treaty.

CHAPTER VI

SETTLEMENT OF DISPUTES

Article 22

If in the opinion of any Party to the present Treaty there has arisen a dispute concerning the interpretation or execution of the Treaty, which is not settled by reference to a special claims tribunal or by other agreed means, the dispute shall, at the request of any party thereto, be referred for decision to the International Court of Justice. Japan and

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[1] Senate doc. 123, 81st Cong., 1st sess., p. 34.

those Allied Powers which are not already parties to the Statute of the International Court of Justice will deposit with the Registrar of the Court, at the time of their respective ratifications of the present Treaty, and in conformity with the resolution of the United Nations Security Council, dated October 15, 1946,[1] a general declaration accepting the jurisdiction, without special agreement, of the Court generally in respect to all disputes of the character referred to in this Article.

CHAPTER VII

FINAL CLAUSES

Article 23

(a) The present Treaty shall be ratified by the States which sign it, including Japan, and will come into force for all the States which have then ratified it, when instruments of ratification have been deposited by Japan and by a majority, including the United States of America as the principal occupying Power, of the following States, namely Australia, Canada, Ceylon, France, Indonesia, the Kingdom of the Netherlands, New Zealand, Pakistan, the Republic of the Philippines, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. The present Treaty shall come into force for each State which subsequently ratifies it, on the date of the deposit of its instrument of ratification.

(b) If the Treaty has not come into force within nine months after the date of the deposit of Japan's ratification, any State which has ratified it may bring the Treaty into force between itself and Japan by a notification to that effect given to the Governments of Japan and the United States of America not later than three years after the date of deposit of Japan's ratification.

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[1] U. N. Sec. Council Official Records, 1st year: 2d Series, No. 19.

Article 24

All instruments of ratification shall be deposited with the Government of the United States of America which will notify all the signatory States of each such deposit, of the date of the coming into force of the Treaty under paragraph (a) of Article 23, and of any notifications made under paragraph (b) of Article 23.

Article 25

For the purposes of the present Treaty the Allied Powers shall be the States at war with Japan, or any State which previously formed a part of the territory of a State named in Article 23, provided that in each case the State concerned has signed and ratified the Treaty. Subject to the provisions of Article 21, the present Treaty shall not confer any rights, titles or benefits on any State which is not an Allied Power as herein defined; nor shall any right, title or interest of Japan be deemed to be diminished or prejudiced by any provision of the Treaty in favor of a State which is not an Allied Power as so defined.

Article 26

Japan will be prepared to conclude with any State which signed or adhered to the United Nations Declaration of January 1, 1942, and which is at war with Japan, or with any State which previously formed a part of the territory of a State named in Article 23, which is not a signatory of the present Treaty, a bilateral Treaty of Peace on the same or substantially the same terms as are provided for in the present Treaty, but this obligation on the part of Japan will expire three years after the first coming into force of the present Treaty. Should Japan make a peace settlement or war claims settlement with any State granting that State greater advantages than those provided by the present Treaty, those same advantages shall be extended to the parties to the present Treaty.

Article 27

The present Treaty shall be deposited in the archives of the Government of the United States of America which shall furnish each signatory State with a certified copy thereof.

IN FAITH WHEREOF the undersigned Plenipotentiaries have signed the present Treaty.

DONE at the city of San Francisco this eighth day of September 1951, in the English, French, and Spanish languages, all being equally authentic, and in the Japanese language.

I CERTIFY THAT the foregoing is a true copy of the Treaty of Peace with Japan which was signed in the English, French, Spanish, and Japanese languages at San Francisco on September 8, 1951, the signed original of which is deposited in the archives of the Government of the United States of America.

IN TESTIMONY WHEREOF, I, DEAN ACHESON, Secretary of State of the United States of America, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer of the said Department, at the city of Washington, in the District of Columbia, this tenth day of September, 1951.

DEAN ACHESON

Secretary of State

By M. P. CHAUVIN

Authentication Officer Department of State

WHEREAS the Senate of the United States of America by their resolution of March 20, 1952, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the said Treaty with the following declaration:

"As part of such advice and consent the Senate states that nothing the treaty contains is deemed to diminish or prejudice, in favor of the Soviet Union, the right, title, and interest of Japan, or the Allied Powers as defined in said treaty, in and to South Sakhalin and its adjacent islands, the Kurile Islands, the Habomai Islands, the island of Shikotan, or any other territory, rights, or interests possessed by Japan on December 7, 1941, or to confer any right, title, or benefit therein or thereto on the Soviet Union; and also that nothing in the said treaty, or the advice and consent of the Senate to the ratification thereof, implies recognition on the part of the United States of the provisions in favor of the Soviet Union contained in the so-called 'Yalta agreement' regarding Japan of February 11, 1945."

WHEREAS the said Treaty was duly ratified by the President of the United States of America on April 15, 1952, in pursuance of the aforesaid advice and consent of the Senate and subject to the aforesaid declaration;

WHEREAS it is provided in Article 23 of the said Treaty that the Treaty will come into force for all the States which have then ratified it when instruments of ratification have been deposited by Japan and by a majority, including the United States of America as the principal occupying Power, of the following States, namely Australia, Canada, Ceylon,[1] France, Indonesia, the Kingdom of the Netherlands, New Zealand, Pakistan, the Republic of the Philippines, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, and in Article 24 of the said Treaty that all instruments of ratification shall be deposited with the Government of the United States of America;

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[1] Ratification deposited Apr. 28, 1952.

WHEREAS instruments of ratification of the said Treaty were deposited with the Government of the United States of America by Japan on November 28, 1951 and by the United Kingdom of Great Britain and Northern Ireland on January 3, 1952, by Australia on April 10, 1952, by New Zealand on April 10, 1952, by Canada on April 17, 1952, by Pakistan on April 17, 1952, by France on April 18, 1952, and by the United States of America on April 28, 1952;

WHEREAS instruments of ratification were also deposited with the Government of the United States of America by Mexico on March 3, 1952 and by Argentina on April 9, 1952;

AND WHEREAS, pursuant to the aforesaid provisions of Article 23 of the said Treaty, the Treaty came into force on April 28, 1952;

NOW, THEREFORE, be it known that I, Harry S. Truman, President of the United States of America, do hereby proclaim and make public the said Treaty of Peace with Japan to the end that the same and every article and clause thereof, subject to the declaration hereinbefore recited, shall be observed and fulfilled with good faith, on and after April 28, 1952, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof, and do hereby further proclaim that the state of war between the United States of America and Japan terminated on April 28, 1952.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this twenty-eighth day of April in the year of our Lord one thousand nine hundred fifty-two and of the Independence of the United States of America the one hundred seventy-sixth.

HARRY S TRUMAN

By the President:
DEAN ACHESON
Secretary of State

DECLARATION

With respect to the Treaty of Peace signed this day, the Government of Japan makes the following Declaration:

1. Except as otherwise provided in the said Treaty of Peace, Japan recognizes the full force of all presently effective multilateral international instruments to which Japan was a party on September 1, 1939, and declares that it will, on the first coming into force of the said Treaty, resume all its rights and obligations under those instruments. Where, however, participation in any instrument involves membership in an international organization of which Japan ceased to be a member on or after September 1, 1939, the provisions of the present paragraph shall be dependent on Japan's readmission to membership in the organization concerned.

2. It is the intention of the Japanese Government formally to accede to the following international instruments within the shortest practicable time, not to exceed one year from the first coming into force of the Treaty of Peace:
(1) Protocol opened for signature at Lake Success on December 11, 1946, amending the agreements, conventions and protocols on narcotic drugs of January 23, 1912, February 11, 1925, February 19, 1925, July 13, 1931, November 27, 1931, and June 26, 1936;
(2) Protocol opened for signature at Paris on November 19, 1948, bringing under international control drugs outside the scope of the convention of July 13, 1931, for limiting the manufacture and regulating the distribution of narcotic drugs, as amended by the protocol signed at Lake Success on December 11, 1946;

(3) International Convention on the Execution of Foreign Arbitral Awards signed at Geneva on September 26, 1927;
(4) International Convention relating to Economic Statistics with protocol signed at Geneva on December 14, 1928, and Protocol amending the International Convention of 1928 relating to Economic Statistics signed at Paris on December 9, 1948;
(5) International Convention relating to the Simplification of Customs Formalities, with protocol of signature, signed at Geneva on November 3, 1923;
(6) Agreement of Madrid of April 14, 1891, for the Prevention of False Indications of Origin of Goods, as revised at Washington on June 2, 1911, at The Hague on November 6, 1925, and at London on June 2, 1934;
(7) Convention for the Unification of Certain Rules relating to International Transportation by Air, and additional protocol, signed at Warsaw on October 12, 1929;
(8) Convention on Safety of Life at Sea opened for signature at London on June 10, 1948;
(9) Geneva conventions of August 12, 1949, for the protection of war victims.

3. It is equally the intention of the Japanese Government, within six months of the first coming into force of the Treaty of Peace, to apply for Japan's admission to participation in (a) the Convention on International Civil Aviation opened for signature at Chicago on December 7, 1944, and, as soon as Japan is itself a party to that Convention, to accept the International Air Services Transit Agreement also opened for signature at Chicago on December 7, 1944; and (b) the Convention of the World Meteorological Organization opened for signature at Washington on October 11, 1947.

DONE at the city of San Francisco this eighth day of September 1951.

DECLARATION

With respect to the Treaty of Peace signed this day, the Government of Japan makes the following Declaration:

Japan will recognize any Commission, Delegation or other Organization authorized by any of the Allied Powers to identify, list, maintain or regulate its war graves, cemeteries and memorials in Japanese territory; will facilitate the work of such Organizations; and will, in respect of the abovementioned war graves, cemeteries and memorials, enter into negotiations for the conclusion of such agreements as may prove necessary with the Allied Power concerned, or with any Commission, Delegation or other Organization authorized by it.

Japan trusts that the Allied Powers will enter into discussions with the Japanese Government with a view to arrangements being made for the maintenance of any Japanese war graves or cemeteries which may exist in the territories of the Allied Powers and which it is desired to preserve.

DONE at the city of San Francisco this eighth day of September 1951.

I CERTIFY THAT the foregoing is a true copy of each of the two Declarations made by the Government of Japan and signed on its behalf in the English, French, Spanish, and Japanese languages at San Francisco on September 8, 1951, the signed originals of which are deposited in the archives of the Government of the United States of America.

IN TESTIMONY WHEREOF, I, DEAN ACHESON, Secretary of State of the United States of America, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer of the said Department, at the city of Washington, in the District of Columbia, this tenth day of September, 1951.

The Secretary of State to the Japanese Prime Minister

UNITED STATES DELEGATION

SAN FRANCISCO

September 8, 1951

EXCELLENCY:

Upon the coming into force of the Treaty of Peace signed today, Japan will assume obligations expressed in Article 2 of the Charter of the United Nations which requires the giving to the United Nations of "every assistance in any action it takes in accordance with the present Charter".

As we know, armed aggression has occurred in Korea, against which the United Nations and its members are taking action. There has been established a unified command of the United Nations under the United States pursuant to Security Council Resolution of July 7, 1950,[1] and the General Assembly, by Resolution of February 1, 1951,[2] has called upon all states and authorities to lend every assistance to the United Nations action and to refrain from giving any assistance to the aggressor. With the approval of SCAP,[3] Japan has been and now is rendering important assistance to the United Nations action in the form of facilities and services made available to the members of the United Nations, the Armed Forces of which are participating in the United Nations action.

Since the future is unsettled and it may unhappily be that the occasion for facilities and services in Japan in support of United Nations action will continue or recur, I would appreciate confirmation, on behalf of your Government, that if and when the forces of a member or members of the United Nations are engaged in any United Nations action in

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[1] U. N. doc. S/1588

[2] Resolution 498 (V).

[3] Supreme Commander for the Allied Powers.

the Far East after the Treaty of Peace comes into force, Japan will permit and facilitate the support in and about Japan, by the member or members, of the forces engaged in such United Nations action; the expenses involved in the use of Japanese facilities and services to be borne as at present or as otherwise mutually agreed between Japan and the United Nations member concerned. In so far as the United States is concerned the use of facilities and services, over and above those provided to the United States pursuant to the Administrative Agreement which will implement the Security Treaty between the United States and Japan, would be at United States expense, as at present.

Accept, Excellency, the assurances of my most distinguished consideration.

The Japanese Prime Minister to the Secretary of State

JAPANESE DELEGATION

SAN FRANCISCO

September 8, 1951

EXCELLENCY:

I have the honor to acknowledge the receipt of Your Excellency's Note of today's date in which Your Excellency has informed me as follows:

Upon the coming into force of the Treaty of Peace signed today, Japan will assume the obligations expressed in Article 2 of the Charter of the United Nations which requires the giving to the United Nations of "every assistance in any action it takes in accordance with the present Charter."

As we know, armed aggression has occurred in Korea, against which the United Nations and its Members are taking action. There has been established a Unified Command of the United Nations under the United States pursuant to Security Council Resolution of July 7, 1950, and the General

Assembly, by Resolution of February 1, 1951, has called upon all states and authorities to lend every assistance to the United Nations action and to refrain from giving any assistance to the aggressor. With the approval of SCAP, Japan has been and now is rendering important assistance to the United Nations action in the form of facilities and services made available to the Members of the United Nations, the armed forces of which are participating in the United Nations action.

Since the future is unsettled and it may unhappily be that the occasion for facilities and services in Japan in support of United Nations action will continue or recur, I would appreciate confirmation, on behalf of your Government, that if and when the forces of a Member or Members of the United Nations are engaged in any United Nations action in the Far East after the Treaty of Peace comes into force, Japan will permit and facilitate the support in and about Japan, by the Member or Members, of the forces engaged in such United Nations actions; the expenses involved in the use of Japanese facilities and services to be borne as at present or as otherwise mutually agreed between Japan and the United Nations Member concerned. In so far as the United States is concerned the use of facilities and services, over and above those provided to the United States pursuant to the Administrative Agreement which will implement the Security Treaty between the United States and Japan, would be at United States expense, as at present.

With full cognizance of the contents of Your Excellency's Note, I have the honor, on behalf of my Government, to confirm that if and when the forces of a Member or Members of the United Nations are engaged in any United Nations action in the Far East after the Treaty of Peace comes into force, Japan will permit and facilitate the support in and about Japan, by the Member or Members of the forces engaged in such United Nations action, the expenses involved in the use of Japanese facilities and

services to be borne as at present or as otherwise mutually agreed between Japan and the United Nations Member concerned. In so far as the United States is concerned the use of facilities and services, over and above those provided to the United States pursuant to the Administrative Agreement which will implement the Security Agreement between Japan and the United States would be at United States expense, as at present.

Accept, Excellency, the assurance of my most distinguished consideration.

Note by the Department of State

Signatures affixed to the Treaty of Peace with Japan are as follows:

FOR ARGENTINA:

HIPOLITO J. PAZ

FOR AUSTRALIA:

PERCY C SPENDER

FOR THE KINGDOM OF BELGIUM:

PAUL VAN ZEELAND

SILVERCRUYS.

FOR BOLIVIA:

LUIS GUACHALLA

FOR BRAZIL:

CARLOS MARTINS

A. DE MELLO-FRANCO

FOR CAMBODIA:

PHLENG

FOR CANADA:

LESTER B PEARSON

R W MAYHEW

FOR CEYLON:

J. R. JAYEWARDENE

G. C. S. COREA

R. G. SENANAYAKE

FOR CHILE:

F. NIETO DEL RIO

FOR COLOMBIA:

CIPRIANO RESTREPO JARAMILL

SEBASTIAN OSPINA

FOR COSTA RICA:

J RAFAEL OREAMUNO.

V. VARGAS ALFARO

LUIS DOBLES SANCHEZ

FOR CUBA:

O GANS

L. MACHADO

JOAQUIN MEYER

FOR THE DOMINICAN REPUBLIC:

V. ORDONEZ

LUIS F. THOMEN

FOR ECUADOR:

A QUEVEDO

R G VALENZUELA

FOR EGYPT:

KAMIL A. RAHIM

FOR EL SALVADOR:

HECTOR DAVID CASTRO

LUIS RIVAS PALACIOS

FOR ETHIOPIA:

MEN YAYEHIRAD

FOR FRANCE:

SCHUMAN

H BONNET

PAUL-EMILE NAGGIAR

FOR GREECE:

A. G. POLITIS

FOR GUATEMALA:

E CASTILLO A

A M ORELLANA

J MENDOZA

FOR HAITI:

JACQUES N. LEGER

GUST LARAQUE

FOR HONDURAS:

J. E. VALENZUELA.

ROBERTO GALVEZ B.

RAUL ALVARADO T

FOR INDONESIA:

AHMAD SUBARDJO.

FOR IRAN:

A G ARDALAN

FOR IRAQ:

A. I. BAKR

FOR LAOS:

SAVANG

FOR LEBANON:

CHARLES MALIK

FOR LIBERIA:

GABRIEL L DENNIS

JAMES ANDERSON

RAYMOND HORACE

J. RUDOLPH GRIMES

FOR THE GRAND DUCHY OF LUXEMBOURG:

HUGUES LE GALLAIS

FOR MEXICO:

RAFAEL DE LA COLINA

GUSTAVO DIAZ ORDAZ

A. P. GASGA

FOR THE KINGDOM OF THE NETHERLANDS:

D U STIKKER

J H VAN ROIJEN.

FOR NEW ZEALAND:

C BERENDSEN

FOR NICARAGUA:

G SEVILLA SACASA

GUSTAVO MANZANARES

FOR THE KINGDOM OF NORWAY:

WILHELM MUNTHE MORGENSTIERNE

FOR PAKISTAN:

ZAFRULLA KHAN

FOR PANAMA:

IGNACIO MOLINO

JOSE A REMON

ALFREDO ALEMAN

J. CORDOVEZ

FOR PARAGUAY:

LUIS OSCAR BOETTNER

FOR PERU:

F BERCKEMEYER.

FOR THE REPUBLIC OF THE PHILIPPINES:

CARLOS P. ROMULO

J M ELIZALDE

VICENTE FRANCISCO

DIOSDADO MACAPAGAL

EMILIANO T. TIRONA

V. G. SINCO

FOR SAUDI ARABIA:

ASAD AL-FAQIH

FOR SYRIA:

F. EL-KHOURI

FOR THE REPUBLIC OF TURKEY:

FERIDUN C ERKIN

FOR THE UNION OF SOUTH AFRICA:

G. P JOOSTE

FOR THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

HERBERT MORRISON.

KENNETH YOUNGER

OLIVER FRANKS

FOR THE UNITED STATES OF AMERICA:

DEAN ACHESON

JOHN FOSTER DULLES

ALEXANDER WILEY

JOHN J. SPARKMAN

FOR URUGUAY:

JOSE A. MORA

FOR VENEZUELA:

Ad referendum

ANTONIO M. ARAUJO

R. GALLEGOS M.

FOR VIET NAM:

T. V. HUU

T. VINH

D. THANH

BUU KINH

FOR JAPAN:

SHIGERU YOSHIDA

HAYATO IKEDA

GIZO TOMABECHI

NIRO HOSHIJIMA

MUNEYOSHI TOKUGAWA.

HISATO ICHIMADA

[FOREIGN LANGUAGE TEXT OMITTED]

Shigeru Yoshida.

Hayato Ikeda.

Gizo Tomabechi.

Niro Hoshijima.

Muneyoshi Tokugawa.

Hisato Ichimada.

DEAN ACHESON

California Code of Civil Procedure

354.6. (a) As used in this section:

(1) "Second World War slave labor victim" means any person taken from a concentration camp or ghetto or diverted from transportation to a concentration camp or from a ghetto to perform labor without pay for any period of time between 1929 and 1945, by the Nazi regime, its allies and sympathizers, or enterprises transacting business in any of the areas occupied by or under control of the Nazi regime or its allies and sympathizers.

(2) "Second World War forced labor victim" means any person who was a member of the civilian population conquered by the Nazi regime, its allies or sympathizers, or prisoner-of-war of the Nazi regime, its allies or sympathizers, forced to perform labor without pay for any period of time between 1929 and 1945, by the Nazi regime, its allies and sympathizers, or enterprises transacting business in any of the areas occupied by or under control of the Nazi regime or its allies and sympathizers.

(3) "Compensation" means the present value of wages and benefits that individuals should have been paid and damages for injuries sustained in connection with the labor performed. Present value shall be calculated on the basis of the market value of the services at the time they were performed, plus interest from the time the services were performed, compounded annually to date of full payment without diminution for wartime or postwar currency devaluation.

(b) Any Second World War slave labor victim, or heir of a Second World War slave labor victim, Second World War forced labor victim, or heir of a Second World War forced labor victim, may bring an action to recover compensation for labor performed as a Second World War slave labor victim or Second World War forced labor victim from any entity or successor in interest thereof, for whom that labor was performed, either directly or through a subsidiary or affiliate.

That action may be brought in a superior court of this state, which court shall have jurisdiction over that action until its completion or resolution.

(c) Any action brought under this section shall not be dismissed for failure to comply with the applicable statute of limitation, if the action is commenced on or before December 31, 2010.

Agreement

between

the Government of the Federal Republic of Germany

and

the Government of the United States of America

concerning

the Foundation

"Remembrance, Responsibility and the Future"

The Government of the Federal Republic of Germany
and
the Government of the United States of America

Intending to shape relations between their two States in a spirit of friendship and cooperation for the future and to successfully resolve issues stemming from the past,

Recognizing that the Federal Republic of Germany has, building on Allied legislation and in close consultation with victims' associations and interested Governments, provided, in an unprecedented manner, comprehensive and extensive restitution and compensation to victims of National Socialist persecution,

Noting the historic announcement on February 16, 1999, made by the Federal Chancellor and German companies, in which the companies stated their intention to establish a foundation to compensate forced laborers and others who suffered at the hands of German companies during the National Socialist era and World War II,

Noting that, by means of the Foundation Initiative, its member companies wish to respond to the moral responsibility of German business arising from the use of forced laborers and from damage to property caused by persecution, and from all other wrongs suffered during the National Socialist era and World War II,

Recognizing as legitimate the interest German companies have in all-embracing and enduring legal peace in this matter, and further recognizing that such interest was fundamental to the establishment of the Foundation Initiative,

Noting that the two Governments announced that they welcomed and support the Foundation Initiative,

Noting that the Federal Republic of Germany and German companies have since agreed on the creation of a single Foundation, "Remembrance, Responsibility and the Future" (the "Foundation"), formed under German federal law as an instrumentality of the Federal Republic of Germany and funded by contributions from the Federal Republic of Germany and the German companies,

Recognizing that German business, having contributed substantially to the Foundation, should not be asked or expected to contribute again, in court or elsewhere, for the use of forced laborers or for any wrongs asserted against German companies arising from the Nationalist Socialist era and World War II,

Recognizing that it is in the interest of both parties to have a resolution of these issues that is non-adversarial and non-confrontational, outside of litigation,

Recognizing that both parties desire all-embracing and enduring legal peace to advance their foreign policy interests,

Noting in this regard the June 16, 2000, letter of the Assistant to the President of the United States for National Security Affairs and the Counsel to the President of the United States and the July 5, 2000, letter of the Foreign Policy and Security Advisor of the Chancellor of the Federal Republic of Germany, copies of which have been made public,

Having worked as partners, in consultation with other interested parties and governments, to assist German companies to achieve wide support for the total amount of funds and the eligibility criteria of the Foundation and for the establishment of all-embracing and enduring legal peace,

Noting that the Foundation will assure broad coverage of victims and broad participation by companies which would not be possible through judicial proceedings,

Believing that the Foundation will provide as expeditious as possible a mechanism for making fair and speedy payments to now elderly victims,

Having in mind that the Foundation covers, and that it would be in the interests of both parties for the Foundation to be the exclusive remedy and forum for addressing, all claims that have been or may be asserted against German companies arising from the National Socialist era and World War II,

Recalling that for the last 55 years the parties have sought to work to address the consequences of the National Socialist era and World War II through political and governmental acts between the United States and the Federal Republic of Germany,

Noting that this Agreement and the establishment of the Foundation represent a fulfillment of these efforts,

Recognizing that the German Government has tabled a Bill before the German Federal Parliament ("Bundestag") to establish the Foundation –

Have agreed as follows:

Article 1

(1) The parties agree that the Foundation "Remembrance, Responsibility and the Future" covers, and that it would be in their interests for the Foundation to be the exclusive remedy and forum for the resolution of, all claims that have

been or may be asserted against German companies arising from the National Socialist era and World War II.

(2) The Federal Republic of Germany agrees to ensure that the Foundation shall provide appropriately extensive publicity concerning its existence, its objectives and the availability of funds.

(3) Annex A sets forth the principles that shall govern the operation of the Foundation. The Federal Republic of Germany assures that the Foundation will be subject to legal supervision by a German governmental authority; any person may request that the German governmental authority take measures to ensure compliance with the legal requirements of the Foundation.

(4) The Federal Republic of Germany agrees that insurance claims that come within the scope of the current claims handling procedures adopted by the International Commission of Holocaust Era Insurance Claims ("ICHEIC") and are made against German insurance companies shall be processed by the companies and the German Insurance Association on the basis of such procedures and on the basis of additional claims handling procedures that may be agreed among the Foundation, ICHEIC, and the German Insurance Association.

Article 2

(1) The United States shall, in all cases in which the United States is notified that a claim described in article 1 (1) has been asserted in a court in the United States, inform its courts through a Statement of Interest, in accordance with Annex B, and, consistent therewith, as it otherwise considers appropriate, that

it would be in the foreign policy interests of the United States for the Foundation to be the exclusive remedy and forum for resolving such claims asserted against German companies as defined in Annex C and that dismissal of such cases would be in its foreign policy interest.

(2) The United States, recognizing the importance of the objectives of this agreement, including all-embracing and enduring legal peace, shall, in a timely manner, use its best efforts, in a manner it considers appropriate, to achieve these objectives with state and local governments.

Article 3

(1) This agreement is intended to complement the creation of the Foundation and to foster all-embracing and enduring legal peace for German companies with respect to the National Socialist era and World War II.

(2) This agreement shall not affect unilateral decisions or bilateral or multilateral agreements that dealt with the consequences of the National Socialist era and World War II.

(3) The United States will not raise any reparations claims against the Federal Republic of Germany.

(4) The United States shall take appropriate steps to oppose any challenge to the sovereign immunity of the Federal Republic of Germany with respect to any claim that may be asserted against the Federal Republic of Germany concerning the consequences of the National Socialist era and World War II.

Article 4

Annexes A, B and C shall be an integral part of this Agreement.

Article 5

This Agreement shall enter into force on the date on which the parties agree by exchange of notes.

DONE at Berlin on the 17th day of July, 2000, in duplicate in the German and English languages, both texts being equally authentic.

For the Government of the Federal Republic of Germany	For the Government of the Unites States of America

Annex B

of the

Agreement

between

the Government of the Federal Republic of Germany

and

the Government of the United States of America

concerning

the Foundation

"Remembrance, Responsibility and the Future"

Elements of U.S. Government Statement of Interest

Pursuant to Article 2, Paragraph 1, the United States will timely file a Statement of Interest and accompanying formal foreign policy statement of the Secretary of State and Declaration of Deputy Treasury Secretary Stuart E. Eizenstat in all pending and future cases, regardless of whether the plaintiff(s) consent(s) to dismissal, in which the United States is notified that a claim has been asserted against German companies arising from the National Socialist era and World War II.

The Statement of Interest will make the following points:

1. As indicated by his letter of December 13, 1999, the President of the United States has concluded that it would be in the foreign policy interests of the United States for the Foundation to be the exclusive forum and remedy for the resolution of all asserted claims against German companies arising from their involvement in the National Socialist era and World War II, including without limitation those relating to slave and forced labor, aryanization, medical experimentation, children's homes/Kinderheim, other cases of personal injury, and damage to or loss of property, including banking assets and insurance policies.
2. Accordingly, the United States believes that all asserted claims should be pursued (or in the event Foundation funds have been exhausted, should timely have been pursued) through the Foundation instead of the courts.
3. As the President said in his letter of December 13, 1999, dismissal of the lawsuit, which touches on the foreign policy interests of the United States, would be in the foreign policy interests of the United States. The United States will recommend dismissal on any valid legal ground (which, under the U.S. system of jurisprudence, will be for the U.S. courts to determine). The United States will explain that, in the context of the Foundation, it is in the enduring and high interest of the United States to support efforts to achieve dismissal of all National Socialist and World War II era cases against German companies. The United States will explain fully its

foreign policy interests in achieving dismissal, as set forth below.

4. The United States' interests include the interest in a fair and prompt resolution of the issues involved in these lawsuits to bring some measure of justice to the victims of the National Socialist era and World War II in their lifetimes; the interest in the furtherance of the close cooperation this country has with our important European ally and economic partner, Germany; the interest in maintaining good relations with Israel and other Western, Central, and Eastern European nations, from which many of those who suffered during the National Socialist era and World War II come; and the interest in achieving legal peace for asserted claims against German companies arising from their involvement in the National Socialist era and World War II.
5. The Foundation is a fulfillment of a half-century effort to complete the task of bringing justice to victims of the Holocaust and victims of National Socialist persecution. It complements significant prior German compensation, restitution, and pension programs for acts arising out of the National Socialist era and World War II. For the last 55 years, the United States has sought to work with Germany to address the consequences of the National Socialist era and World War II through political and governmental acts between the United States and Germany.
6. The participation in the Foundation not only by the German Government and German companies that existed during the National Socialist era, but also by German companies that did not exist during the National Socialist

era, allows comprehensive coverage of slave and forced laborers and other victims.

7. Plaintiffs in these cases face numerous legal hurdles, including, without limitation, justiciability, international comity, statutes of limitation, jurisdictional issues, forum non conveniens, difficulties of proof, and certification of a class of heirs. The United States takes no position here on the merits of the legal claims or arguments advanced by plaintiffs or defendants. The United States does not suggest that its policy interests concerning the Foundation in themselves provide an independent legal basis for dismissal, but will reinforce the point that U.S. policy interests favor dismissal on any valid legal ground.
8. The Foundation is fair and equitable, based on: (a) the advancing age of the plaintiffs, their need for a speedy, non-bureaucratic resolution, and the desirability of expending available funds on victims rather than litigation; (b) the Foundation's level of funding, allocation of its funds, payment system, and eligibility criteria; (c) the difficult legal hurdles faced by plaintiffs and the uncertainty of their litigation prospects; and (d) in light of the particular difficulties presented by the asserted claims of heirs, the programs to benefit heirs and others in the Future Fund.
9. The structure and operation of the Foundation will assure (or has assured) swift, impartial, dignified, and enforceable payments; appropriately extensive publicity has been given concerning its existence, its objectives, and the availability of funds; and the

Foundation's operation is open and accountable.